CEPANI

1969 - 2019

EPANI

1969 - 2019

YEARS

Jaarlijks Verslag - Rapport Annuel - Annual Report

2019

LE MOT DU PRESIDENT

Het is me een ware eer u deze korte inleiding te richten in mijn hoedanigheid van Voorzitter van CEPANI.

Je saisis cette opportunité pour vous remercier de la confiance ainsi accordée et pour adresser mes plus vifs remerciements à l'ancien Président et actuel Président Honoraire du CEPANI, Dirk De Meulemeester, pour son inestimable contribution au développement du CEPANI.

CEPANI heeft het groot genoegen u haar activiteitenverslag voor het jaar 2019 voor te stellen.

L'année 2019 a été rythmée par de nombreuses manifestations scientifiques et évènements traitant de sujets variés.

Elle fut surtout marquée par la célébration des 50 ans du CEPANI, qui s'est étalée sur trois jours. Cet événement s'est distingué tant par la qualité exceptionnelle des intervenants que par les échanges qu'il a pu susciter et le nombre de praticiens de l'arbitrage qu'il a pu rassembler.

2019 was tevens het hoogtepunt van het hervormingsproces van het CEPANI Arbitragereglement. Immers, is een werkgroep van start gegaan met de herziening ervan trachtende de arbitrageprocedures van CEPANI nog efficiënter te maken, door rekening te houden met de trends en ontwikkelingen binnen de internationale gemeenschap van commerciële arbitrage. De belangrijkste nieuwe kenmerken kunnen als volgt worden samengevat: één enkel Reglement is nu van toepassing op elk type geschil (ongeacht het bedrag in geschil); de overschakeling naar digitale procesvoering waarbij elektronische communicatie de standaardregel wordt; de erkenning van het formele onderzoek van Arbitrale Uitspraken ("toetsing") uitgevoerd door het CEPANI Secretariaat.

Het nieuwe Reglement is van toepassing op alle procedures die op 1 januari 2020 zijn ingeleid. Een nieuwe versie van het Reglement - dat alleen artikel 24 wijzigt - trad ook in werking op 1 juli 2020, en stelt het Scheidsgerecht in staat om te beslissen over het organiseren of houden van virtuele hoorzittingen, indien en voor zover de rechten van de verdediging worden geëerbiedigd en dat aan alle voorwaarden voor het houden van een eerlijk proces is voldaan.

Je ne pourrais évidemment passer sous silence le contexte singulier auquel l'année 2020 est actuellement confrontée. Face aux défis rencontrés par la pandémie, le CEPANI a su faire preuve de flexibilité et de modernité. Le Secrétariat travaille à bureaux fermés mais en étant pleinement opérationnel et en continuant de garantir le bon déroulement des procédures d'arbitrage et de médiation. J'adresse ici mes plus sincères remerciements à l'équipe du Secrétariat, qui a pu s'adapter aux nouvelles conditions de travail, et assurer la continuité des procédures.

De mogelijkheid om een virtuele hoorzitting te houden en het gebruik van elektronische middelen als standaardregel voor communicatie in het kader van CEPANI-arbitrageprocedures, stellen de arbiters en de partijen in staat hangende procedure te voeren, zonder te worden beïnvloed door de overheidsmaatregelen die worden genomen in het kader van de strijd tegen de verspreiding van de COVID-19-epidemie.

Je suis dès lors convaincu que le CEPANI sortira encore plus fort de cette crise sanitaire.

Ik wens u een aangename lectuur toe.

Benoît Kohl

Voorzitter – Président – President

CEPANI 50th ANNIVERSARY

MORNING COLLOQUIUM

Sophie GOLDMAN

Co-chair of CEPANI40

Dirk DE MEULEMEESTER

CEPANI's Honorary President

Philippe LAMBRECHT

CEPANI's Vice-President

Olivier CAPRASSE

L'ARBITRAGE ET LES SOCIÉTÉS

Didier MATRAY

CEPANI's Vice-President

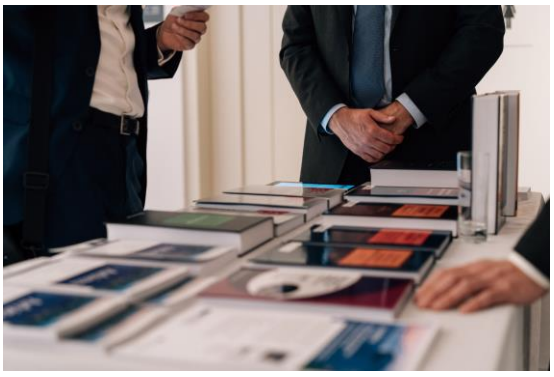
Willem VAN BAREN

Guy KEUTGEN

CEPANI's Honorary President

Jean-Pierre FIERENS

Patrick VAN LEYNSEELE



AFTERNOON ACADEMIC SESSION

Gerard MEIJER

Dirk DE MEULEMEESTER

Didier MATRAY

Jean-François TOSSENS

Benoît KOHL & Maxime BERLINGIN

@ BOZAR

Dirk DE MEULEMEESTER

Andrea CARLEVARIS

Annet VAN HOOFT

Andrea CARLEVARIS

Marcel FONTAINE

GALA DINER

Vanessa FONCKE

Dirk DE MEULEMEESTER

Bernard HANOTIAU

@ BOZAR

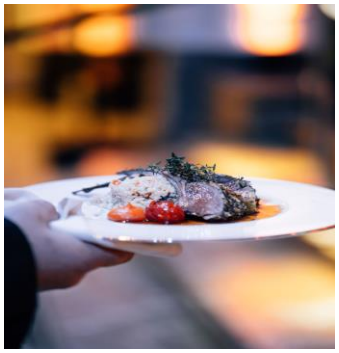
Jan JANSSEN & Flip PETILLION

CEPANI40

Paul LEFEBVRE

Guy KEUTGEN

Olivier CAPRASSE



Kevin ONGENAE

Yves HERINCKX

Mathieu MAES

Didier MATRAY

CEPANI40

GUY VAN DOOSSELAERE

EMMA VAN CAMPENHOUDT

IGNACE CLAEYS

CEPANI'S SECRETARY GENERAL

CEPANI thanks all of you present during this extraordinary event!

We also wish to thank the event partners for their support during these three days of celebration.

HAPPY BIRTHDAY CEPANI!

You can view the motion pictures by clicking on the links below:

https://www.youtube.com/watch?v=a5FX_8ga42s
https://www.youtube.com/watch?v=_D9TEKQcQnk

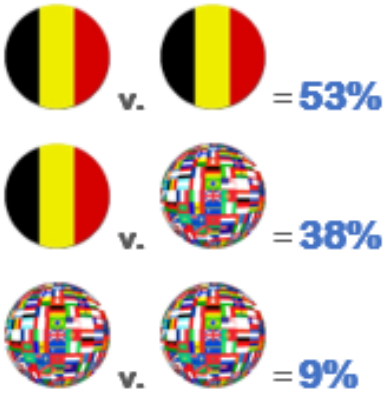
You can view all the pictures of this special event by clicking on the links below:

https://drive.google.com/drive/folders/1Ryk_5hKvgIroOFz7ee6MfvMvgn-Q_Muk?usp=sharing

CEPANI 1969 - 2019 50 YEARS

CEPANI STATISTICAL SURVEY 2019

Origin of the Parties



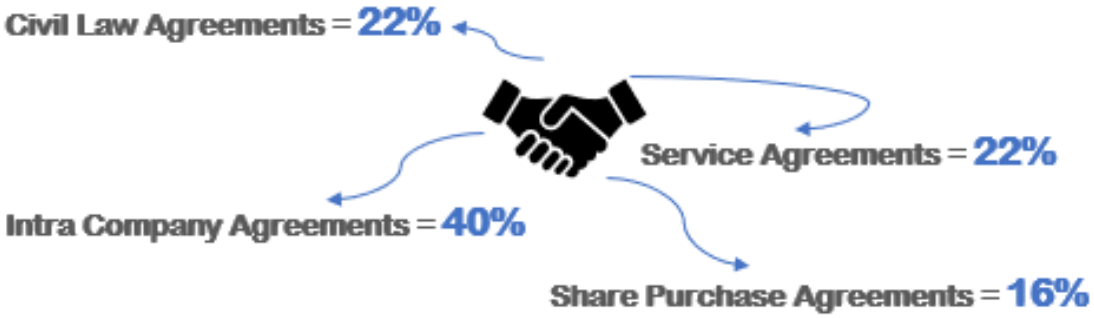
France	1
Germany	4
Luxembourg	2
Mauritius	2
Netherlands	3
Portugal	1
Russia	1
Senegal	1
Switzerland	2
Turkey	1
United Kingdom	1
United States	1

Language of the arbitral proceedings

DUTCH	FRENCH	ENGLISH
25%	41%	34%

Place of the Arbitration

Nature of the dispute



Amount in dispute

€ 0,00 – € 25.000,00 →	13%
€ 25.000,00 – € 125.000,00 →	31%
€ 125.000,00 – 625.000,00 →	28%
€ 625.000,00 – 2.500.000,00 →	16%
€ 2.500.000,00 – 12.500.000,00 →	9%
> € 12.500.000,00 →	3%

Arbitral Tribunal

= 30% Chairman chosen by — Parties = 75% / Appointments Committee = 25%

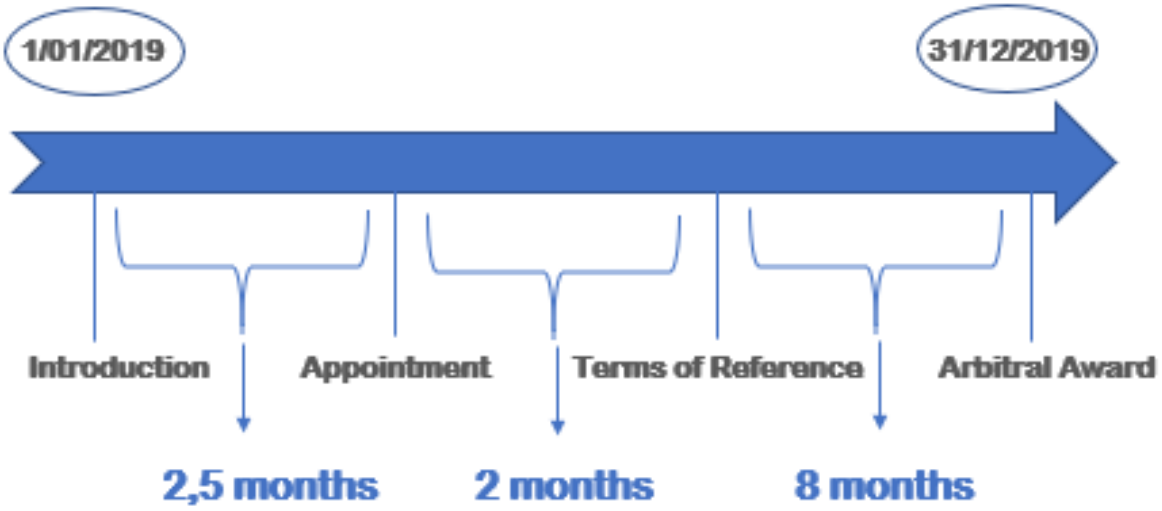
= 70% Arbitrator chosen by — Parties = 25% / Appointments Committee = 75%

0 Emergency Arbitrator

0 Challenges / Replacements

♀	♂	↓40y	↑40y
9%	91%	21%	79%
Parties = 25%		Parties = 11%	
Appointments Committee = 75%		Appointments Committee = 89%	

Average duration of the arbitral proceedings



TOTAL average duration → 12,5 months

QUI SOMMES NOUS?

Le recours à l'arbitrage est de plus en plus souvent privilégié pour résoudre les différends. Celui-ci offre en effet un certain nombre d'avantages non négligeables : il est rapide, confidentiel et financièrement intéressant.

Le CEPANI, qui est le Centre belge d'arbitrage et de médiation, aide les parties à résoudre leurs différends commerciaux de manière sûre et efficace. Il s'engage à offrir aux parties en conflit le cadre juridique et administratif adéquat, afin d'assurer le meilleur traitement du litige.

Fondé en 1969, le CEPANI est aujourd'hui le principal centre d'arbitrage en Belgique. Il a étendu ses activités à d'autres formes de règlement des litiges. Situé au cœur de Bruxelles, qui accueille plusieurs institutions européennes ainsi que de nombreuses sociétés et organisations internationales, le CEPANI offre ses services dans un contexte national et international.

UNE DOUBLE MISSION

► Encadrer les procédures arbitrales et autres procédures qui appliquent les règlements du CEPANI

Le CEPANI désigne des arbitres, des médiateurs, des experts et des tiers indépendants. Il encadre le déroulement des procédures et offre des conseils pratiques ainsi qu'un soutien administratif. Outre l'arbitrage, le CEPANI gère également des procédures de médiation et de mini-trial et assure le suivi des conflits liés aux noms de domaine « .be ».

► Promouvoir l'arbitrage, la médiation et les autres formes de règlement alternatif des litiges

Le CEPANI organise régulièrement des conférences, des colloques, des séminaires ; il décerne un prix scientifique et publie des ouvrages sur le thème de l'arbitrage.

En matière de règlement alternatif des litiges, le CEPANI offre ses compétences uniques en Belgique

L'ARBITRAGE, LE BON CHOIX POUR MON ENTREPRISE ?

LES AVANTAGES DE L'ARBITRAGE

En tant que mode alternatif de règlement des litiges, qui trouve une assise légale dans le Code judiciaire, l'arbitrage offre les **garanties** et la **sécurité juridique** habituelles, avec en prime une plus **grande flexibilité** et une **gestion efficace du temps**.

LES LITIGES POUVANT ÊTRE RESOLUS PAR L'ARBITRAGE

► Affaires financières, commerciales ou industrielles
► Conflits entre associés commerciaux
► Questions liées à une construction ou à la (co-)propriété immobilière
► Gestion de patrimoine, testaments et successions
► Conflits impliquant la responsabilité professionnelle
► Affaires bancaires et liées au droit des sociétés

LA PROCEDURE D'ARBITRAGE

Les parties peuvent soumettre leur différend à un tribunal arbitral, composé d'un ou de trois arbitres ou plus.

Après avoir examiné la demande et les arguments des parties, celui-ci rendra ensuite une décision contraignante, la « sentence arbitrale ».

L'arbitrage ne peut se dérouler qu'avec le consentement de toutes les parties impliquées. Ce consentement peut faire l'objet d'une clause incluse dans tout contrat au moment de sa signature ou d'un accord spécifique conclu après la naissance du litige.

ARBITRAGE INSTITUTIONNEL ET ARBITRAGE *AD HOC*

Les parties qui souhaitent voire résoudre leur conflit par l'arbitrage peuvent opter pour l'arbitrage *ad hoc*, ou pour une procédure supervisée par un centre d'arbitrage tel que le CEPANI.

Dans l'hypothèse d'un arbitrage ad hoc, la procédure est intégralement gérée par les parties ou les arbitres. La

survenance de difficultés peut en prolonger la durée. Les parties paient les frais et honoraires directement aux arbitres.

L'avantage de l'arbitrage institutionnel réside dans le fait que les parties peuvent se fonder sur le règlement du centre pour mener la procédure d'arbitrage. Il garantit une procédure équitable, sûre et rapide au terme de laquelle sera rendue une sentence arbitrale. Le règlement du CEPANI est concis et il offre un cadre contractuel souple aux parties.

UN ARBITRAGE CEPANI

Le CEPANI offre aux parties souhaitant entamer une procédure de résolution de conflit tout le support nécessaire. Il fournit aux parties un règlement – la dernière version du règlement d'arbitrage est entrée en vigueur le 1er juillet 2020 – offrant un cadre juridique clair et précis pour la conduite de la procédure. Le CEPANI n'exerce pas lui-même les fonctions d'arbitre, de médiateur ou de tiers indépendant.
Le Centre garantit la compétence et l'impartialité des arbitres, médiateurs et tiers indépendants, qu'il désigne en tenant compte des spécificités de chaque affaire qui lui est confiée. Les honoraires des arbitres et les frais dus au centre sont déterminés conformément à un barème dont le montant est calculé sur la base du montant des demandes.
Le Secrétariat du CEPANI veille à l'application correcte du règlement du CEPANI par les arbitres. Ce faisant, le Centre peut assurer le déroulement rapide et efficace de chaque procédure.

En termes de logistique, le CEPANI met à la disposition des parties :

- Des salles de réunion / « breakout rooms »
- Un service de restauration
- Un soutien IT
- Le Wi-Fi, un service de photocopie, d'impression, de fax …

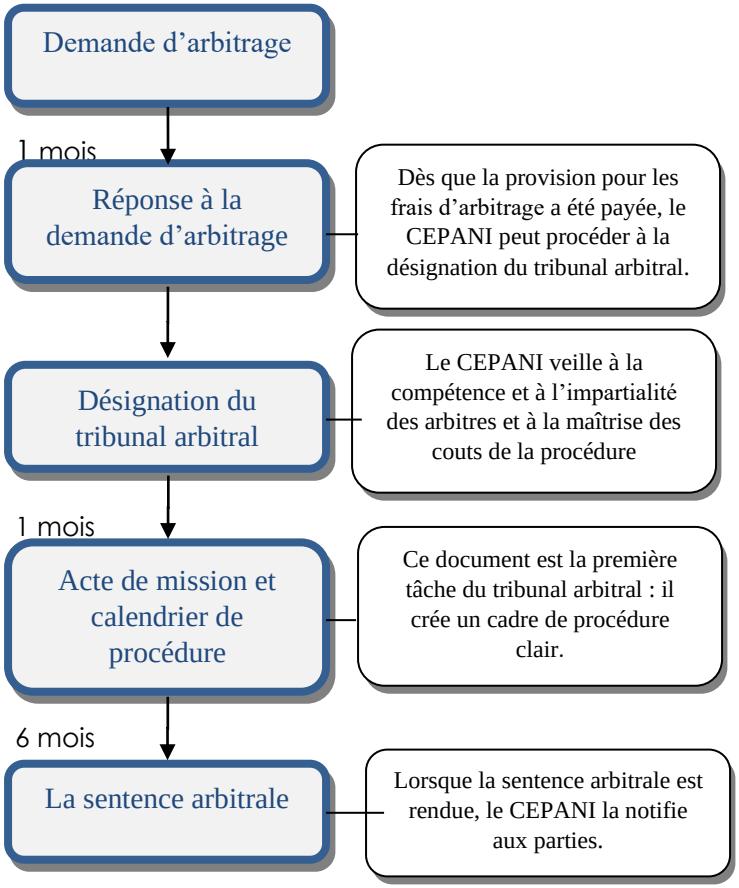
Le rôle du CEPANI est de créer un cadre légal et administratif sûr et de garantir une procédure confidentielle, impartiale et équitable.

Les parties peuvent insérer une clause d'arbitrage dans leur contrat ou convenir d'un arbitrage après la naissance d'un conflit. Les parties qui

souhaitent faire référence au règlement d'arbitrage du CEPANI sont invitées à insérer dans leurs contrats la clause type suivante:

"Tous différends découlant du présent contrat ou en relation avec celui-ci seront tranchés définitivement suivant le règlement d'arbitrage du CEPANI par un ou plusieurs arbitres nommés conformément à ce règlement."

Aperçu de la procédure



Dans le cas d'un litige d'importance pécuniaire limitée, le CEPANI propose une procédure simplifiée. Sont visés les conflits pour lesquels le montant de la demande principale et de l'éventuelle demande reconventionnelle ne dépassent pas 100.000 EUR. Si, au cours de la procédure, le montant total des demandes principale et reconventionnelle vient à excéder ce montant, cette procédure reste applicable, sauf si les parties en conviennent autrement.

Pour les litiges d'importance pécuniaire limitée, le CEPANI propose une procédure moins coûteuse et plus rapide :

- une procédure accélérée est d'application pour les litiges dont l'enjeu est inférieur à 100.000 EUR
- procédure simplifiée /pas d'Acte de Mission
- délais plus courts

ANDERE METHODEN VAN GESCHILLENBESLECHTING

Mediatie

Mediatie is een alternatieve methode van geschillenbeslechting waarbij partijen een derde persoon (de bemiddelaar) verzoeken hen te helpen om een minnelijke regeling te vinden voor hun geschil dat voortvloeit uit eender welke contractuele of andere juridische relatie.

Mini-trial

Mini-trial is de perfecte procedurevorm voor iedere ondernemer die een geschil zo snel en efficiënt mogelijk wil oplossen zodat op korte termijn de normale handelsrelaties zouden kunnen worden hervat. In een mini-trial duidt iedere partij een hooggeplaatste verantwoordelijke aan als bijzitter in het mini-trialcomité. Deze vertegenwoordiger moet voldoende bevoegdheid hebben om de partij te kunnen binden wanneer een minnelijke regeling wordt bereikt. CEPANI duidt de voorzitter van het comité aan.

Technisch deskundigenonderzoek

Indien partijen tijdens een CEPANI-procedure met eventuele technische moeilijkheden worden geconfronteerd, kunnen zij beroep doen op het CEPANI-reglement voor technisch deskundigenonderzoek. Het technisch deskundigenonderzoek is ook mogelijk buiten een CEPANI procedure.

Een dergelijk deskundigenonderzoek kan een minnelijke regeling tussen partijen faciliteren of waardevolle gegevens opleveren. Indien nodig, kunnen partijen de resultaten van het deskundigenonderzoek in latere juridische procedures of in een arbitrage aanwenden. Tenzij anders overeengekomen, zijn de resultaten en conclusies van de expert bindend.

Aanpassing van overeenkomsten

De omstandigheden waarin een overeenkomst wordt gesloten, kunnen mettertijd veranderen. Dan kan de noodzaak ontstaan om de overeenkomst te herzien en waar nodig aan te passen aan de veranderde omstandigheden. Ook voor die procedure biedt CEPANI de juiste ondersteuning. Bij het opstarten van een procedure tot aanpassing van

overeenkomsten benoemt CEPANI een onafhankelijke derde beslisser, die ofwel bepaalde aanbevelingen zal opstellen voor de betrokken partijen, ofwel, indien beide partijen daarmee op voorhand instemmen, een regel zal formuleren die hen definitief bindt.

NOG STEEDS NIET OVERTUIGD?

U beheert dagelijks uw onderneming met alle daarbij horende strategische, operationele en commerciële uitdagingen. Dit vormt een veeleisende en uitdagende opdracht. Er kan zich ten allen tijde een geschil voordoen met uw cliënten, leveranciers of vennoten. Het is in uw belang dat een dergelijk geschil **snel** en **efficiënt** kan worden behandeld.

Hebt u al gedacht aan arbitrage?

Een beslechting van een conflict via arbitrage laat toe om zeer snel **een beslissing te bekomen wanneer de situatie dringend is**. Uw geschil wordt op definitieve wijze behandeld **door competente en ervaren arbiters**. U kan zelfs arbiters kiezen die gespecialiseerd zijn in de sector waarin u actief bent of in de materie van het betrokken geschil. De arbiters zijn geheel onafhankelijk en beslissen volledig neutraal. De zaken kunnen in om het even welke taal behandeld worden of in om het even welk land gekozen door de partijen. **De vertrouwelijkheid is gegarandeerd** – uw bedrijfsgeheimen en know-how zijn beschermd.

De beslissingen van de arbiters hebben **dezelfde waarde als beslissingen van de rechtbanken.** Zij beslechten daadwerkelijk de geschillen en laten u toe om beslag te leggen op de goederen van uw schuldenaar in meer dan 150 landen ter wereld.

Arbitrage biedt u een alternatieve manier van geschillenbeslechting aan met een grote toegevoegde waarde.

CEPANI biedt u tevens bemiddelings- en verzoeningsdiensten aan, evenals andere manieren van alternatieve geschillenbeslechting die steeds de voorkeur geven aan een minnelijke oplossing.

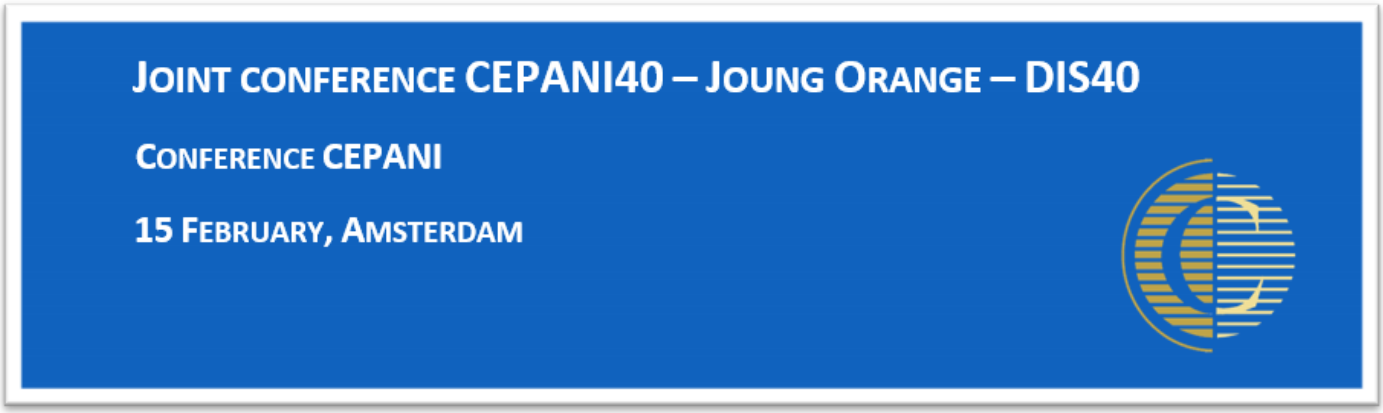
HET ONDERZOEK NAAR EN DE PROMOTIE VAN ARBITRAGE – WETENSCHAPPELIJKE ACTIVITEITEN VAN CEPANI

Net zoals 2018, vormde 2019 een jaar vol hoogwaardige wetenschappelijke evenementen.

CEPANI

ACTIVITEITENKALENDER

Hierna volgt een opsomming van de evenementen waaraan CEPANI en CEPANI40 actief heeft deelgenomen en die door CEPANI werden georganiseerd doorheen het jaar 2019:



JOINT CONFERENCE CEPANI40 – NAI JONG ORANGE – DIS40 : BATTLE OF JURISDICTIONS, SEATS AND ARBITRAL INSTITUTIONS ?

On 15 February 2019, NAI Jong Oranje, CEPANI40 and DIS40 organized a half day seminar in Amsterdam aimed at comparing the arbitration proceedings in the Netherlands, Belgium and Germany (and the rules of their respective institutions).

This seminar offered the opportunity to compare the conduct of arbitral proceedings in these three countries. The role of the arbitral institutions and of state courts in each were also analyzed.

The first panel was moderated by Roelien VAN DEN BERG (Omni Bridgeway) and concerned the conduct of arbitral proceedings in each jurisdiction. Nadir KHALIL (Allen & Overy) started with a presentation of the Dutch specificities. Second came a presentation by Guillaume CROISANT (Linklaters) who promoted very brightly the Belgian arbitration law and the CEPANI rules, presenting amongst others the arbitrability questions that arise under Belgian law, the availability of mechanisms to join third parties under the CEPANI rules and the recent trends in Belgian case-law. Muge ERDOGMUS (Bodenheimer Herzberg) followed with a presentation of the German system.

The subject of the second panel was the role of state courts. This panel was moderated by Dr. Benjamin LISSNER (CMS). Marjolein VAN REST (BarentsKrans) for the Netherlands, Olivier VAN DER HAEGEN (Loyens & Loeff) for Belgium and Christian STEGER (Latham & Watkins) for Germany presented the role of the state

courts before, during and after arbitration proceedings in their respective country.

The third panel was moderated by Maarten DRAYE (Hanotiau & van den Berg). Mirjam TROUW (case manager NAI), Camille LIBERT (case manager CEPANI) and Chun-Kyung PAULUS SUH (counsel DIS) described their respective institution and presented successively the role of their institution in the arbitration proceedings. . Camille LIBERT for CEPANI took the opportunity to present some of the features of the future CEPANI rules which will enter into force on 1 January 2020. She described the main changes of these new rules (formalization of the scrutiny of the draft award by CEPANI, integration of the accelerated proceedings in the rules (for all claims with an amount below EUR 100.000)).

This seminar was a very good occasion for young Belgian lawyers to understand the operation of arbitration proceedings held under the NAI or DIS rules.

BY ADRIEN FINK

ASSOCIATE LAGA

ANNUAL CONFERENCE OF THE BELGIAN CHAPTER OF CEA

CONFERENCE CEPANI

15 FEBRUARY, BRUSSELS

4th Annual Conference of the Belgian Chapter of the Club Español del Arbitraje (CEA) : ''Arbitration and ADR in BIG construction projects of strategic infrastructure''

On 15 February 2019, the Belgian Chapter of the Club Español del Arbitraje held its IV Annual Conference on "Arbitration and ADR in BIG construction projects of strategic infrastructure".

Professor Nicolas ANGELET (Université Libre de Bruxelles) delivered the keynote speech on the role of arbitration to serve the common good.

The Conference was structured in two sessions. The First Panel, moderated by Professor Patricia Saiz (ESADE Law School, Barcelona) and titled "Investment arbitration: where do we stand?", addressed the most pressing issues in investment arbitration. Antonio VÁZQUEZ-GUILLÉN (Allen & Overy, Madrid) retraced the history up to the most recent developments of investment arbitration cases against Spain in the renewable energy sector. Tim MAXIAN RUSCHE (European Commission, Legal Service) illustrated that there is no place for intra-EU BITs after the Achmea decision (C-284/16), recalling that EU law provides remedies for a complete protection of investments, and evoking the principle of mutual trust between Member States. Ignacio SANTABAYA (Jones Day, Madrid) took the audience through the Vattenfall II case (ICSID Case No. ARB/12/12) and elaborated on the difficulty to find a balance between the investor's legitimate expectations and the State's freedom to regulate. Finally, Professor Petra BUTLER (Victoria University of Wellington) provided a ius naturale approach, as opposed to legal positivism, and analysed the relationship between investment arbitration and human rights.

The Second Panel, under the chairmanship of Alexander HANSEBOUT (Altius, Brussels) tackled "Dispute resolution in big-scale construction projects". Francesco Andreano, Stairwise, Turin, highlighted the paradox of the lack of discipline on delays vis-à-vis the significant damages they cause, both in terms of suspension of operations, and loss of opportunities. Ioana KNOLLTUDOR (Jeantet, Paris) focused on liability in subcontracting chains: she presented different ways to draft back-to-back contracts, and elaborated on the importance of drafting thorough dispute resolution provisions, reflecting on various issues, including the possibility for the sub-contractor to join a case between the main contractor and the client. Monica FERIA-TINTA (20 Essex Street, London) spoke about States and State-owned enterprises as procuring entities or main contractors, and suggested to focus, before the start of any contract, on reflecting on how the contract relates to treaty protection, and clarifying the obligations both parties need to comply with. Hannah VAN ROESSEL (Omni Bridgeway, Amsterdam) discussed third-party funding in large construction projects, distinguishing between merits funding and enforcement funding, and recalling that the success of financing litigation depends on the actual payment, as the award being in favour of the funded party cannot be considered as sufficient. Finally, Jacques-Alexandre GENET (Archipel, Paris) introduced the main challenges to the enforcement of arbitral awards against States and State-owned entities, and advised to ensure to fully comprehend the State structure, which is relevant for conduct identification and attribution.

The conclusive remarks were delivered by José ANTONIO CAÍNZOS FERNÁNDEZ (Honorary President of the Club Español del Arbitraje, Partner at Clifford Chance, Madrid) who recollected the main ideas emerged during the debate, and closed the Conference with recommendations on the selection of experts, whose role has a notable impact on the outcome of arbitration cases.

BY DR. FLAVIA MARISI
ATTORNEY-AT-LAW

THE "PRAGUE RULES" ON THE EFFICIENT CONDUCT OF PROCEEDINGS IN INTERNATIONAL ARBITRATION: (A)N (R)EVOLUTION OR MUCH ADO ABOUT NOTHING ?

LUNCH DEBATE CEPANI

26 FEBRUARY, BRUSSELS

THE ''PRAGUE RULES'' ON THE EFFICIENT CONDUCT OF PROCEEDINGS IN INTERNATIONAL ARBITRATION : (A)N (R)EVOLUTION OR MUCH ADO ABOUT NOTHING ?

SPEAKERS :
PASCAL HOLLANDER
DR. CHRISTOPH LIEBSCHER MB

The stage of the afternoon discussions was set by a delightful buffet lunch and a warm welcome by the Chairman of CEPANI, Mr Dirk DE MEULEMEESTER. He introduced the two speakers, each distinguished arbitrators in their own right, who would go toe to toe on the Rules on the Efficient Conduct of Proceedings in International Arbitration, better known as the "Prague Rules".

Dr. Christoph LIEBSCHER (Liebscher Dispute Management) had been a member of the Working Group which drafted the Prague Rules, and could therefore offer insider insights on the inception of the Prague Rules, as well as on some of their highlights. He emphasised that the Prague Rules are not to be construed as some sort of Cold Warrish attack on the well-established IBA Rules on the Taking of Evidence in International Arbitration, but rather as a unique opportunity to challenge the way things have always been done.

Dr LIEBSCHER further underscored that said Rules are the brainchild of close to three years of intense discussions and debates within the arbitral community, as well as much arduous work from a team of drafters from varying legal

backgrounds. While the Prague Rules are often presented as a more civil law oriented set of rules than the IBA Rules, he noted that "civil law legal traditions" in themselves vary strongly. The proposed Rules aim at providing the arbitral community with an alternative, more streamlined procedure actually driven by the tribunal.

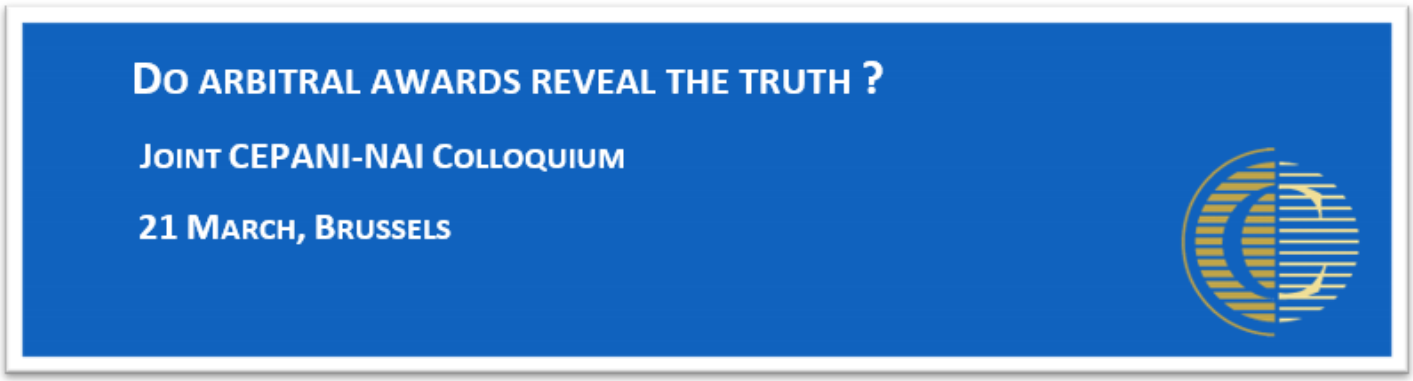
On the other hand, Mr Pascal Hollander (partner at Hanotiau & van den Berg and former Vice-Chair of the IBA Arbitration Committee) could not have been better placed to delve into possible pitfalls and critical considerations when attempting to apply this new set of Rules, as opposed to the IBA Rules. In particular, he commended the drafters of the Prague Rules for their diligent and incessant work on this very ambitious project, but noted, however, that whether the end result was worth the effort, only time will tell.

Mr HOLLANDER underscored that many provisions of the Prague Rules did not raise any concerns, yet that others, such as article 2 regarding the Case Management Conference, were, in his opinion, unrealistic and overly optimistic. He also remarked that he would personally be reluctant to shift the lead role during the cross-examination of fact witnesses from counsel to the tribunal, as proposed in article 5 of the Prague Rules.

To finish off, both speakers emphasized the value of opening up a constructive discussion regarding alternative views on conducting arbitral proceedings and welcomed the Prague Rules as yet another soft-law tool to add to the arbitrator's toolkit.

BY BEATRICE VAN TORNHOUT

ASSOCIATE HANOTIAU & VAN DEN BERG



DO ARBITRAL AWARDS REVEAL THE TRUTH ?

On 21 March 2019, NAI and CEPANI organised a joint colloquium on whether arbitral awards reveal the truth and the expectations in that regard of parties, counsel and arbitrators

After a welcome by Dirk DE MEULEMEESTER (President, CEPANI), Bernard HANOTIAU (Hanotiau & van den Berg) probed into the philosophical underpinnings of the concept of truth in arbitration. What parties really want, Mr HANOTIAU argued, is that tribunals resolve disputes in a reasonable manner that is coherent with the facts.

The first presentation dealt with the instruments available to parties in the search for the truth. Rob HOEFNAGELS (SPIE Nederland B.V.) dealt with expert evidence in construction disputes, arguing from practical experience that parties can be faced with significant difficulties when trying to measure costs of delay and disruption retroactively. Luc IMBRECHTS (Imbrechts & Van den Nest) set out the documentary instruments available to parties and explained how a paper trail during a project can be useful for its neutrality, accuracy and contemporaneousness.

The second presentation concerned the instruments available to counsel in the search for the truth. Hetty DE ROOIJ (BarentsKrans) explained from practical examples how even minor untrue statements by counsel, witnesses or experts can irreparably damage counsel's credibility in the eyes of a tribunal and argued for counsel's obligation to truthfulness. Dorothée VERMEIREN (Clifford Chance) set out and explained the advantages and limitations of various procedural instruments available to counsel and explained the particular rules governing

unlawfully obtained evidence under Belgian law.

Prof. Daan ASSER (Hoge Raad (ret.), Leiden University (em.)) then provided a judicial perspective on the role of arbitrators in searching for the truth, drawing on basic principles of civil procedure common to Belgium and the Netherlands.

Marieke VAN HOOIJDONK (Allen & Overy) and Yves HERINCKX (Herinckx SPRL) gave a joint presentation on the impact of IBA guidelines and rules on the search for the truth in arbitration.

The closing panel discussion concerned arbitration users' expectations on searching the truth and was chaired by Luc DEMEYERE (Contrast). The panellists agreed that while users' goal is not the actual truth, the arbitration process mustimpart on the users the perception of fair truthseeking. Patrick BAETEN (Engie) explained that users expect a tribunal to find a balance between truth-seeking and other factors. Hamish LAL (Akin Gump Strauss Hauer & Feld) posited as key expectations that a Tribunal can operate a Redfern schedule, can draw inferences from gaps and can weigh all evidence and see contradictions. Vanessa FONCKE (Jones Day) focused on counsel's responsibilities in managing users' expectations.

In his closing remarks, Gerard MEIJER (President, NAI) summarised the participants' contributions. He drew attention to the extended truth-searching role by extension of state courts, through which arbitral awards can enter the public sphere. He argued that the public perception of both investment and commercial arbitration is under pressure and, consequently, the arbitration community cannot afford to take a lax approach to the truth. Mr MEIJER concluded that even with its limitations and exceptions, truth-searching is essential to arbitration.

BY NADIR KHALIL

ASSOCIATE ALLEN & OVERY

ORAL ADVOCACY IN INTERNATIONAL ARBITRATION – OPENING SESSION OF THE BRUSSELS PRE-MOOT.

On April 3rd 2019, CEPANI40 and White&Case jointly organised a conference titled "Oral advocacy in International Arbitration" as an opening session of the Brussels' Vis Pre-Moot. This conference was fully in line with the founding principles of the Moot and Cepani40 which, both, aim at fostering the study of international commercial law and arbitration and providing, to students and young practitioners, access, on top of first-hand experience, knowledge and experience of others.

After a warm welcome and introduction by Sophie GOLDMAN (Co-President Cepani40), Nathalie COLIN (Partner White&Case) and Alexandre HUBLET (Associate – White&Case) delivered a presentation on the do's and don'ts of an oral pleading in international arbitration based on their experience in the field.

Nathalie COLIN started the presentation by drawing the attention of the students and of the audience to the goal they must seek to achieve: to convince. Mrs. COLIN did emphasize that, in order for an oral presentation to be effective, it has to respect some key principles: it must necessarily be Clear, Concise, Credible and Convincing (the so-called "four C's").

After stating the obvious need for a thorough preparation, Ms. COLIN insisted on the fact that any oral presentation must also be adapted and tailored to the audience. There cannot be a "one-size fits all" approach when it comes to addressing an audience. The background (legal and non-legal) and the culture of an arbitrator are, amongst

others, elements that one should bear in mind when preparing. Her last piece of advice was to always introduce and conclude, the presentation must be a "guided tour" of the case with the map given in advance to the arbitrators.

Alexandre HUBLET ended the conference by exposing a few tips, tricks and recommendations. Mr. HUBLET shared his experience in the Moot as a participant and the knowledge and experience he gathered in his years of practice. Amongst all the important elements he presented, one particularly caught the attention of the audience: an oral presentation starts when one walks into the room and ends when one leaves.

The conference ended by a networking drink offered by White&Case. In a friendly atmosphere, students and professionals alike had the chance to exchange and discuss the moot, the activities of Cepani40 and International Commercial Arbitration in general.

BY JÉRÔME JACQUES

ADVISOR ARENDT AND MEDERNACH

THE BRUSSELS PRE-MOOT

4-5 APRIL, BRUSSELS

REPORT ON THE BRUSSELS PRE-MOOT.

On 4 and 5 April 2019, a heated debate took place in Brussels. At stake: fundamental issues relating to international arbitration and international sales law. The debate was led by students from all over the world, who had come to Brussels for the 6th edition of the Brussels Pre-Moot, a yearly recurring precompetition for the popular Willem C. Vis International Commercial Arbitration Moot. The students at the Brussels Pre-Moot came from 13 different universities from various parts of the world: Australia, Belgium, Brazil, New Zealand, Paraguay, Russia and The Netherlands.

The students had a chance to test and improve their pleading skills as representatives of the parties involved in the fictitious dispute, which this year concerned an international sales agreement affected by the imposition of a new tariff on agricultural products. The tariff of 30% happened to encompass the product that had been sold by Claimant to Respondent, which led to a dispute regarding the party that should bear the ensuing additional costs.

Before the parties dug deeper into the issue of the unforeseen nature of the changes of circumstances making the performance of the contract more onerous (for the seller in this case) and the right of a party negatively affected by such changes to request an adaptation of the contract, they first presented their arguments regarding the law applicable to the arbitration proceedings.

The parties then moved on to the merits of the case, in particular the scope of the badly drafted "hardship clause" contained in the contract, which had also been negotiated by two different

teams of negotiators on either side. The parties' representatives therefore pleaded issues of intent in contract

drafting and the meaning of economic hardship created by a change of circumstance under the CISG (the United Nations Convention on Contracts for the International Sale of Goods), which does not contain an express hardship rule.

Finally, in order to strengthen its case, Claimant had attempted to introduce into evidence a prior arbitral award, issued in proceedings in which the Respondent was a party, relating to similar issues as the ones at stake in this case. The only problem: the award could only have been obtained through two former employees of the Respondent or by way of a hack of Respondent's computer system. In either case, the award was obtained by illegal means and the Claimant had paid a certain sum to obtain access to it. For this third issue, the students therefore had to argue to what extent evidence obtained by illicit means may be relied upon in arbitration.

Brussels is a popular and dynamic arbitration hub for international disputes. Year after year, students therefore have the chance to compete before and meet renowned Belgian arbitrators, lawyers and professors. For this 6th edition of the Brussels Pre-Moot, the final was arbitrated by Françoise LEFÈVRE (Linklaters), Vanessa FONCKE (Jones Day) and Jean-François TOSSENS (Tossens Goldman Gonne), who crowned the University of New South Wales as winner of this year's edition.

BY JASMINE RAYéE
ASSOCIATE LOYENS & LOEFF

26TH WILLEM C. VIS INTERNATIONAL COMMERCIAL ARBITRATION MOOT

JOINT EVENT CEPANI40 & WHITE&CASE

1 3 APRIL, VIENNA

REPORT ON THE CEPANI40 & WHITE&CASE JOINT EVENT ON THE OCCASION OF THE 26TH WILLEM C. VIS INTERNATIONAL COMMERCIAL ARBITRATION MOOT.

Brick walls and retro lighting set the scene for this year's CEPANI40 - White & Case joint event on the occasion of the 26th Willem C. Vis International Commercial Arbitration Moot.

On 13 April 2019, the Planter's Club, a colonial style bar in the heart of Vienna hosted more than 150 participants who shared the same passion for international commercial arbitration.

Academics, practitioners, and students from different parts of the world, exchanged views and ideas about the moot problem and shared personal experiences in the field of international arbitration. The event was an ideal opportunity not only to meet friends and colleagues from previous moot court competitions but also to make new acquaintances in the field.

On behalf of White & Case, Nathalie COLIN (Partner, Brussels) and Alexandre HUBLET (Associate, Brussels) attended the reception. CEPANI40 was represented by Sophie GOLDMAN, co-chair of the CEPANI 40, who gave a warm welcome speech.

CEPANI40 aims at promoting arbitration in Belgium and abroad by bringing together young students and practitioners interested in the field. To this end, CEPANI40 organizes meetings and events such as the one that took place in Vienna this year.

BY DIMITRA A. TSAKIRI

ASSOCIATE KNOETZL

INVESTMENT ARBITRATION AND EU LAW

SÉMINAIRE CEPANI40 ET VAN BAEL & BELLIS

8 MAI, BRUSSELS

RAPPORT SUR LE SÉMINAIRE CEPANI40 ET VAN BAEL & BELLIS – INVESTMENT ARBITRATION AND EU LAW.

Le 8 mai dernier, le CEPANI40 et le cabinet Van Bael & Bellis ont organisé un séminaire consacré aux relations, souvent conflictuelles et complexes, entre l'arbitrage d'investissement et le droit européen à la suite de deux récentes décisions historiques rendues par la Cour de Justice de l'Union européenne dans les affaires Achmea (C-284/16) et Opinion 1/17 concernant, respectivement, la validité des mécanismes de règlement des différends entre investisseurs et Etats dans les traités d'investissement conclus par les Etats membres entre eux, et par l'Union européenne avec des Etats tiers.

Sans surprise eu égard à la qualité des intervenants et l'actualité de ces questions, c'est devant une salle comble – dont un nombre important de diplomates et de fonctionnaires internationaux – que Sophie Goldman, la co-présidente du CEPANI40, a introduit l'après-midi avant de laisser la place à Melchior Wathelet, ancien premier avocat général et juge auprès de la CJUE.

Dans son éloquent discours d'ouverture, Melchior Wathelet (avocat général dans Achmea) a exposé de manière critique le raisonnement suivi par la Cour de Justice dans cette affaire pour conclure que les mécanismes de règlement des différends entre investisseurs et Etats prévus dans les traités d'investissement conclus entre les Etats membres étaient contraires au principe d'autonomie du droit européen, au monopole de la Cour de justice pour son interprétation et au principe de confiance mutuelle entre les Etats membres. Son analyse de ces questions fut d'un grand intérêt, dans la mesure où dans son opinion Melchior Wathelet leur avait apporté une solution inverse à celle retenue par la Cour.

Discours d'ouverture de M. Wathelet

Les conséquences de l'affaire ACHMEA furent examinées en plus de détails par Emily HAY (Hanotiau & van den Berg) et Tim MAXIAN RUSCHE (services juridiques de la Commission européenne) dans le cadre du premier panel, modéré par Isabelle VAN DAMME (Van Bael & Bellis). Au cours de cette riche discussion, ponctuée de nombreuses interventions du public, Emily HAY a présenté les principales décisions des tribunaux d'investissement rendues dans des litiges intra-européens après Achmea, dont la plupart ont refusé de décliner leur juridiction malgré la décision de la Cour de justice. Tim MAXIAN RUSCHE a, quant à lui, exposé la position de la Commission européenne et des différentes déclarations rendues par plusieurs groupes d'Etats membres, en concluant que les sentences rendues par ces tribunaux contrevenaient à la décision de la Cour, qu'il considère également applicable aux litiges d'investissement intra-européens basés sur la Charte énergétique européenne. Les intervenants ont aussi discuté des premières décisions rendues par les juridictions des Etats membres dans le cadre des procédures d'exécution de sentences rendues par des tribunaux arbitraux constitués en vertu de traités d'investissement intra-européen.

Enfin, le deuxième panel, modéré par Quentin DECLÈVE (Van Bael & Bellis), réunissait Carinne POCHET (services juridiques du ministère des affaires étrangères belge) et Colin BROWN (services juridiques de la DG Commerce de la Commission européenne) afin de discuter de l'Opinion 1/17 de la Cour de Justice – qui consacre la validité du système de « cour sur l'investissement » (composée d'un tribunal de première instance et d'un tribunal d'appel, dont les juges sont nommés par les seuls Etats) prévu par l'accord économique et commercial global conclu entre le Canada et l'Union européenne (mieux connu sous son acronyme anglais ; « CETA ») – et de l'ambition de la Commission européenne de remplacer les différentes cours sur l'investissement prévues par différents traités européens

(voire des traités conclus par les Etats membres avec des Etats tiers, ou des Etats tiers entre eux) par une Cour multilatérale d'investissement unique. Ce fut l'occasion pour Colin d'informer l'audience, toujours aussi engagée, de l'accueil réservé à cette proposition par des Etats tiers dans le cadre des discussions du Groupe de Travail III de la CNUDCI (sur la réforme de l'arbitrage d'investissement) où il représente la Commission européenne.

BY GUILLAUME CROISANT

LECTURER, UNIVERSITÉ LIBRE DE BRUXELLES

ASSOCIATE LINKLATERS LLP

ENFORCEMENT, SETTING ASIDE AND RELATED TREATY CLAIMS : A VIEW FROM EUROPE

ICC ARBITRATION CONFERENCE

10 MAY, GENEVA

REPORT ON THE ICC ARBITRATION CONFERENCE ON ENFORCEMENT, SETTING ASIDE AND RELATED TREATY CLAIMS : A VIEW FROM EUROPE.

On Friday 10 May 2019, the ICC and ICC Switzerland organized a conference in Geneva to celebrate the 100th anniversary of the ICC International Court of Arbitration. The conference was sponsored by several other arbitral institutions, including CEPANI. The event gathered more than a hundred participants. The conference was held in the afternoon and divided in two sessions.

The first session, entitled "the final battle(s): a tour d'Europe of the practice of national courts in relation to setting aside and enforcement of arbitral awards", brought on the scene seasoned and talented practitioners from six different jurisdictions in Europe: Spain (David ARIAS), Italy (Maria Beatrice DELI), Switzerland (Xavier FAVRE-BULLE), Ukraine (Olena PEREPELYNSKA), France (Philippe PINSOLLE) and, last but not least, Belgium (Françoise LEFÈVRE). Each of them highlighted the main features of enforcement and setting aside proceedings in their respective jurisdiction, and provided an update on the most recent trends in the case law of their country. Many topics were addressed, including the controversial case law of the Madrid High Court, the scope of public policy control in Italy, the pros and cons of the stringent procedural requirements under Swiss

law, the recent trends in annulment proceedings against investment treaty awards in Paris and the Belgian constitutional court's decision on third-party opposition proceedings. The presentations were followed by an animated debate amongst the panellists.

The second session focused on a different topic, namely whether, in certain exceptional circumstances, a (commercial) arbitral award (or even the right to arbitrate under an arbitration clause) may be considered a protected asset under an investment treaty, allowing the creditor of an award to introduce an investment treaty arbitration against the debtor's state for having obstructed enforcement of the award on the debtor's assets. Enlightening presentations were given by Yas BANIFATEMI, Pietro GALIZZI, Jan KLEINHEISTERKAMP and Juriaan BRAAT.

The two sessions were moderated respectively by Sebastiano NESSI (session one) and Reka Agnes PAPP (session two). Maxi SCHERER made a vibrant closing speech, which was followed by a cocktail reception in the premises of the Geneva Golf Club.

BY OLIVIER VAN DER HAEGEN
AVOCAT LOYENS & LOEFF

UITREIKING VAN DE WETENSCHAPPELIJKE PRIJS VAN CEPANI EN VOORDRACHT DOOR DR. DUGGAL

6 JUNI, BRUSSELS

VERSLAG OVER DE UITREIKING VAN DE WETENSCHAPPELIJKE PRIJS VAN CEPANI EN VOORDRACHT DOOR DR. DUGGAL.

Na afloop van de algemene vergadering van 6 juni 2019 werden de leden van CEPANI evenals de overige geïnteresseerden vergast op een hoogstaande academische uiteenzetting door dr. Kabir DUGGAL, de winnaar van de driejaarlijkse academische prijs van CEPANI. Aanvankelijk zou enkel een prijsuitreiking plaatsvinden en zou vice-eersteminister Didier Reynders het woord nemen. Omdat minister Reynders op de avond van de algemene vergadering echter werd ontboden bij de vorst, was er geen plaats voor vrijheid en voor recht. Gelukkig werd Dr. DUGGAL bereid gevonden om in te vallen en zijn bekroond proefschrift over 'Evidence in Investor-State Arbitration' toe te lichten. Na een bevlogen laudatio door Stéphanie DAVIDSON namens het selectiecomité van de wetenschappelijke prijs, stak dr. DUGGAL van wal.

Uitgangspunt van de presentatie was de vaststelling dat voor bewijsvoering in investeringsarbitrage soms een benadering van 'anything goes' lijkt te gelden. Zo had opposing counsel in een van de eerste arbitrages van dr. DUGGAL geargumenteerd dat een staatkundige fusie ophanden was tussen Bolivia en Venezuela ('Bolizuela'), en legde hij ter staving daarvan een krantenartikel voor. Verschillende billable hours later bleek het echter om een aprilvis te gaan van de redactie van de NY Times.

Dr. DUGGAL vond het merkwaardig dat zulks zomaar kan in arbitrage. De reden daarvoor was volgens hem dat de beoordelingsvrijheid van arbiters op vlak van bewijsvoering virtueel onbegrensd is. Niettemin zijn er ook ondanks die absolute vrijheid algemene principes te ontwaren in de rechtspraktijk. Nergens wordt bijvoorbeeld vereist dat de bewijslast op de eiser rust, maar dat is niettemin een algemeen erkend beginsel van bewijsvoering in investeringsarbitrage ("also when the primary evidence was accidentally thrown … in a dumpster"), op basis waarvan zelfs de vernietiging van de award kan worden gevorderd wegens "serious departure from a fundamental rule of procedure" (art. 52(1)(d) ICSID-verdrag).

Naast bewijslast werd ook ingegaan op de bewijsstandaard. Wat dat betreft stelde dr. DUGGAL dat er naargelang de aard van de te bewijzen bewering een verschillende drempel lijkt te bestaan. De gebruikelijke standaard in investeringsarbitrage is, net zoals in de meeste civil law jurisdicties, de zgn. 'balance of probabilities'-test, waarbij de innerlijke overtuiging van de arbiters doorslaggevend is. Anderzijds geldt voor zwaardere aantijgingen (die in investeringsarbitrage vaak voorkomen) zoals fraude, omkoping, corruptie, etc. een verhoogde standaard. Dat betekent niet dat aktetassen vol geld (al dan niet harambee) of geveinsde consultancycontracten de facto ontsnappen aan de beoordeling van arbiters. Alleen dat 'more likely than not' in dat geval niet volstaat.

Tot slot werd ook de toelaatbaarheid van gehackt bewijsmateriaal behandeld. In tijden van 'leaks' (zij het Panama-, Kazakh-, Wiki-, etc.), begint dit fenomeen aan belang te winnen. Ook daar was dr. DUGGAL erin geslaagd om een verschil in benadering bloot te leggen al naargelang de aard van de aangevoerde documenten. Zo zijn gehackte maar niet-vertrouwelijke documenten toelaatbaar als bewijs wanneer zij op het internet circuleren, maar is gehackte correspondentie tussen advocaten en hun cliënten in diezelfde omstandigheden niet toelaatbaar. De achterliggende reden daarvoor is het overkoepelende belang van de bescherming van de vertrouwelijkheid. Daar anders over oordelen zou een incentive creëren om

de mailservers van advocatenkantoren te hacken.

Het enthousiasme van de spreker was werkelijk aanstekelijk. Geen langdradig overzicht van esoterische overwegingen uit zijn doctoraal proefschrift, maar een praktijkgedreven benadering aan de hand van een aantal spraakmakende voorbeelden. De verfrissende en intelligente uiteenzetting van dr. DUGGAL werd door de aanwezigen erg geapprecieerd.

BY KEVIN ONGENAE

PHD RESEARCHER UGENT

ADVOCAAT, GENT

NAI'S 70TH ANNIVERSARY CONGRESS

REPORT

27 JUNE, AMSTERDAM

REPORT ON NAI'S 70TH ANNIVERSARY CONGRESS.

On 28 June 2019 the Netherlands Arbitration Institute (NAI) celebrated its 70th anniversary with a congress, which was held with pomp and circumstance at NautaDutilh's Rotterdam offices.

To mark the occasion, Prof. Henk SNIJDERS started with a presentation about the history of the institute and its leaders. Prof. Gerard MEIJER, NAI's President, surprised both Prof. Albert Jan VAN DEN BERG and Prof. Henk SNIJDERS by announcing the board's decision to make the former the institute's Honorary Chairman and the latter an Honorary Board Member.

In honour of NAI's parting Managing Director, Ms Fredy VON HOMBRACHTBRINKMAN, the book "Going Dutch: ADR in Nederland, in het bijzonder bij het NAI" ("ADR in the Netherlands, in particular at the NAI") was presented by Prof. Corjo JANSEN.

A panel discussion followed, moderated by Prof. Carla KLAASSEN and Prof. Gerard MEIJER. Topics included the nature of a good arbitrator, the parties' expectations, the efficiency of the process and areas of concern for the NAI. Amongst other issues, Ms Melanie VAN LEEUWEN asked for attention to be paid to the NAI's international development and the diversity of its pool of arbitrators. Prof. Arthur HARKAMP criticised the duration of arbitration proceedings and advocated the combination of arbitration with mediation. Mr Willem VAN BAREN insisted that the NAI, following CEPANI's example, should have an electronic platform in place and should not 'rest on its laurels'.

Following this debate, CEPANI's Chairman, Mr Dirk DE MEULEMEESTER –

tongue in cheek – looked at the NAI from a Belgian perspective and gave it some advice for the future. For a moment, the audience was at the Leids Cabaret Festival.

Ms Fredy VON HOMBRACHT-BRINKMAN was extensively honoured for her long career at the NAI and for professionalising its organisation. Some promotions within NAI's administrative team were then announced. Finally, Ms Camilla PERERA–DE WIT was presented as NAI's new Managing Director from September 2019 onwards. Ms PERERA-DE WIT said that she had some 'large shoes to fill' but that she was ready to help the institute move further along its chosen path. The whole celebration was concluded by Ms Dominique ENGERS, a poet, eloquently summarising the afternoon event.

BY ALEXANDER HANSEBOUT

PARTNER ALTIUS

70TH SESSION OF UNCITRAL WORKING GROUP II ON ARBITRATION AND CONCILIATION

REPORT

23-27 SEPTEMBER, VIENNA

REPORT ON THE 70TH SESSION OF UNCITRAL WORKING GROUP II ON ARBITRATION AND CONCILIATION.

For a number of years, CEPANI has participated as an observer in the activities of Working Group II of the the United Nations Commission on International Trade Law (UNCITRAL). From 23 to 27 September, a CEPANI delegation attended the 70th session of this Working Group in Vienna.

After Working Group II's successful completion of a project relating to mediation which resulted in the Singapore Convention, at its fifty-first session, the UNCITRAL Commission decided to mandate Working Group II to take up issues relating to expedited arbitration. It was suggested that the work could consist of providing information on how the UNCITRAL Arbitration Rules could be modified (including by parties) or incorporated into contracts via arbitration clauses that provided for expedited procedures or in guidance to arbitral institutions adopting such procedures, in order to ensure the right balance between fast resolution of the dispute and respect for due process.

The Working Group, chaired by Mr. Andrés JANA (Chile) felt that the work should focus on improving the efficiency of the arbitral proceedings, which would result in the reduction of the cost and duration of the proceedings. The scope of the project was subject to discussions during the sixty ninth session in New York in February 2019.

After this initial discussion in New York, the Working Group agreed that it would first focus on establishing an international framework on expedited

arbitration, without any prejudice to the form that such work might take. It was further agreed that the Working Group would then consider aspects relating to emergency arbitration, adjudication, early dismissal and preliminary determination by arbitral tribunal.

The Working Group generally agreed that it should focus on international arbitration adopting a generic approach. While the preliminary focus of the work would be on international commercial arbitration, its impact on investment and other types of arbitration would be assessed at a later stage, depending on the outcome of the work. Ahead of the session in Vienna, the UNCITRAL Secretariat prepared a preparatory document containing a number of possible draft provisions for discussion by the Working Group.

With regard to the applicability of expedited rules, discussion arose regarding the question whether there should be a presumption that the expedited arbitration rules would apply to disputes arisen after the coming into force of such rules. A concern repeatedly raised was that parties might not be aware of the existence of any new expedited rules. In this regard, the majority of delegations, including Belgium, advocated that express consent of the parties would be necessary for expedited arbitration to apply. The Working Group further considered which criteria could determine when expedited arbitration would apply. While it was noted that many expedited rules of arbitral institutions had in place a financial threshold which would trigger the application of expedited arbitration, doubts were expressed on whether work by UNCITRAL should include such a threshold. Doubts were also expressed on whether other criteria (for example, the characteristics of the case and relevant circumstances) could be used to determine the applicability of expedited arbitration.

During the 70th session of the Working Group this September in Vienna, the observing institutions were asked to share their experience on the determining criteria. Like CEPANI, the vast majority of the institutions all apply a financial threshold tailored to their respective markets. For obvious reasons it would be virtually impossible to agree on a general amount for all the Member States, as the amounts currently applied in the different States varied from US$100.000 up to US$ 6.000.000. One possible solution would be for the parties to agree on their own threshold in the same manner as they agree on other aspects of the arbitration, such as the applicable law and the seat of arbitration.

As to the number of arbitrators, most Member States agreed for 1 arbitrator to be the default rule, notwithstanding the possibility of 3 arbitrators when agreed upon by both parties or when the complexity of the case would require an arbitral tribunal composed of 3 arbitrators.

Who appoints the arbitrator? The delegations generally agreed for parties to appoint the arbitrator. However, if they cannot come to an agreement within a certain time frame (e.g. after 15 days), an appointing authority should have the power to do so. The ICC shared its experience stating that only in 18 out of 69 cases in the context of expedited proceedings, the arbitrator was appointed by the parties.

Next, the debate turned to the time period between the different stages. Most delegations advocated a general time limit. Regarding the question whether a hearing should be the default rule or should be avoided, the Member States pointed out the positive effect on efficiency a hearing can have.

Finally, with regard to the rendering of the award, as currently drafted, the provision foresees for the arbitral tribunal to state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons

have to be given. This final part of the provision received criticism, also from CEPANI, clarifying that, as is the case in most other rules, CEPANI Rules require every arbitral award to provide reasons, also in emergency arbitration or in expedited cases (Art. 22(1) of the Expedited Rules). One of the reasons being that absence of reasons is a ground for setting aside under Belgian law.

Throughout the debates due process paranoia – i.e. user criticism that arbitral tribunals sometimes fail to take robust decisions in situations where due process is not actually at stake out of fear for setting aside – played a central role in revising the different provisions. A further recurring question was how to address the absence of an arbitral institution in an ad hoc framework such as the UNCITRAL Arbitration Rules.

Finally, on early dismissal and preliminary determination, after having heard the different views, the Chair considered this subject could benefit from additional information on the use of such tools in international arbitration and domestic court practice leaving the delegations some homework for the next session, which will be held in New York in February 2020.

BY SIGRID VAN ROMPAEY

PARTNER MATRAY, MATRAY & HALLET,

A DISPUTE ? THINK ABOUT ARBITRATION – BRUSSELS, THE EUROPEAN ARBITRATION HUB

CEPANI EVENT

23 SEPTEMBER, SEOUL

REPORT ON THE CEPANI EVENT : A DISPUTE ? THINK ABOUT ARBITRATION – BRUSSELS, THE EUROPEAN ARBITRATION HUB.

On 23 September 2019, during the International Bar Association (IBA) annual conference in Seoul, the business-support agency of the Brussels-Capital Region (hub.brussels) and CEPANI jointly organized a seminar & networking diner to promote Brussels and CEPANI under the title 'A dispute? Think about arbitration – Brussels, the European Arbitration Hub'.

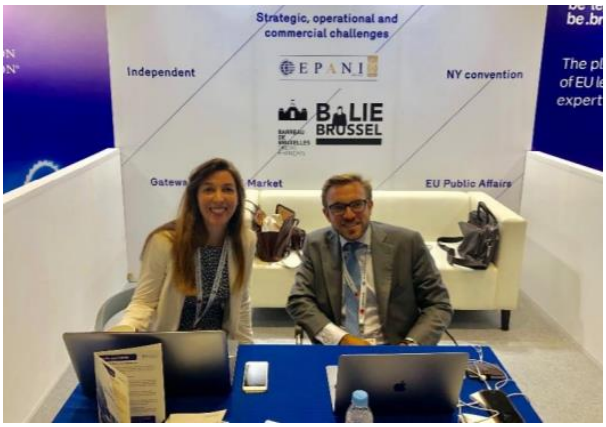
After some welcome words by Mr. Victor DULAIT (Area Manager East Asia at hub.brussels), a presentation was given on this topic by Mr. Peter CALLENS, in his capacity of President of the Brussels Bar (Dutch language section) and board member of CEPANI.

The presentation included the following topics: what is special about Belgium in general and Brussels in particular, new legal framework (judicial code and CEPANI rules), no distinction between national and international arbitration, arbitration institute with tradition.

Mr. CALLENS made a very convincing case in front of an audience with Korean practitioners and businessmen, as well as some well-known colleagues who made the trip to Seoul.

It is worth mentioning that in addition to this event, both CEPANI and the Brussels bar (Ms. Isabelle Andoulsi and Mr. Pierre-Yves Thoumsin), as well as hub.brussels

(Mr. Victor Dulait), were present through the entire duration of the conference at dedicated corners in the main hall of the conference, giving a strong visibility to our country.



BY CÉDRIC ALTER

PARTNER JANSON

FAVOR ARBITRANDUM : MORE THAN A MOTTO ?

CEPANI40 & ICC YAF CONFERENCE

4 OCTOBER, BRUSSELS

REPORT ON THE CEPANI40-ICC YAF CONFERENCE : FAVOR ARBITRANDUM : MORE THAN A MOTTO ?

To kick off October 2019, ICC YAF and CEPANI40 organized an evening conference at Loyens & Loeff Brussels on the concept of Favor Arbitrandum. As interesting as its name sounds barbaric, the topic was brilliantly exposed to an audience of ca. 35 arbitration practitioners by keynote speaker Olivier CAPRASSE. Mr. CAPRASSE was accompanied by four panellists who touched upon specific aspects of Favor Arbitrandum: Jasmine RAYÉE (Loyens & Loeff Brussels), Marily PARALIKA (Fieldfisher Paris, ex counsel ICC), Clément FOUCHARD (Reed Smith Paris) and Benjamin SIINO (Shearman & Sterling Paris).

Favor Arbitrandum refers to the "pro-arbitration bias", or, put more simply, the attitude aimed at facilitating dispute resolution through arbitration, or more specifically at facilitating smooth conduct of arbitration proceedings once started. Mr. CAPRASSE distinguished these two levels, analysing first the principle of "Favor Arbitrandum and Arbitration", and second the principle "Favor Arbitrandum within Arbitration". As to the first, Mr. CAPRASSE developed several examples of how lawmakers, arbitrators, parties and counsel (can) favour arbitration in specific situations. As to the second, Mr. CAPRASSE outlined three specific illustrations on how to search for efficiency in arbitration proceedings once started. Among these, he gave the audience some tips and tricks on how to solve issues related to conflicting concerns in the process. These included the importance of transparency and relevance of making the right choices when shaping the conduct of arbitration proceedings. Regarding transparency for example, Mr. CAPRASSE namely exposed his views on conflicting concerns regarding

awards publication, as well as the procedure leading to the appointment of the arbitral tribunal. The main take-away of the first part of this conference can be summarised as follows: even though arbitration is not the panacea, the flexibility it offers – especially in international contexts – is usually a good reason to keep the path leading to it wide open. Therefore, it is key that parties, counsel and arbitrators develop a conscious attitude favouring arbitration before, during and after the arbitration process.

The panellists then each detailed specific situations where arbitration actors can (and should) apply Favor Arbitrandum. First, Ms. Jasmine RAYÉE talked about the proarbitration approach of third parties (e.g. state courts) when reviewing the validity of arbitral agreements. Second, Ms. Marily PARALIKA examined the role arbitral institutions can play in facilitating arbitration. As member of the ICC, she stressed the importance for these institutions both to safeguard integrity of the process and to address the needs of users in order to establish their trust in the legitimacy of that process. Third, Mr. Clément FOUCHARD addressed the importance of Favor Arbitrandum in the conduct of proceedings sensu stricto. In doing so, he outlined some tensions that can exist between arbitrators and judges or between arbitrators and parties, and how one shall try to blunt them, aiming at facilitating an efficient process. Finally, Mr. Benjamin SIINO concluded this stimulating evening conference by analysing the principle of Favor Arbitrandum under the New York Convention, herewith providing the audience with useful insights on how to apply Favor Arbitrandum in the execution of arbitral awards.

BY BENEDICTE MELOT

ASSOCIATE QUINZ

DUTCH ARBITRATION DAY - CHALLENGES AND OPPORTUNITIES IN A NEW DECADE: THE IMPACT OF THE CHANGING LEGAL AND POLITICAL LANDSCAPE ON ARBITRATION.

10 OCTOBER, AMSTERDAM

The conference ended by an informal networking drink, during which speakers and participants pursued interesting debates regarding questions raised during the conference, but also general discussions regarding activities of ICC YAF and CEPANI40.

Report on the Dutch Arbitration day - Challenges and Opportunities in a new Decade: The Impact of the Changing Legal and Political Landscape on Arbitration.

The Dutch Arbitration Association held its seventh annual conference on 10 October 2019, at the Hermitage Museum. This year's event focused on the "Challenges and Opportunities in a new Decade: The Impact of the Changing Legal and Political Landscape on Arbitration".

The day started with a very enriching diversity networking breakfast, where Thomas STOUTEN (Counsel, Houthoff, Rotterdam) moderated a panel on "Implicit bias, diversity and inclusiveness within the arbitration community", composed of Lisa BINGHAM (Legal Counsel, Permanent Court of Arbitration), Jan DE HOUWER (Professor at Ghent University, Department of Experimental-Clinical and Health Psychology) and Marily PARALIKA (Partner, Fieldfisher, Paris).

After a few words of introduction of Natalie VLOEMANS (President of the Dutch Arbitration Association, partner at Ploum, Rotterdam), the two keynote addresses were delivered by Lord MANCE (Barrister, 7 King's Bench Walk,

London) and Stephen JAGUSCH QC (Partner, Quinn Emanuel Urqhart & Sullivan, London) before a full house of around 200 attendees, many coming from abroad. Lord MANCE discussed the convergences and divergences of arbitration and court litigation, following his return to the world of arbitration after his tenure as Deputy President of the Supreme Court, whilst Stephen JAGUSCH QC made an outspoken and thought-provoking presentation of what he considers the "Right, the Wrong and the Ruinous" of contemporary international arbitration.

The keynote addresses were followed by a presentation by Rogier SCHELLAARS (Partner, Van Doorne, Amsterdam) of the results of an empirical survey on "The Dutch view on arbitration as a means of dispute resolution" (described as the Dutch version of the well-known Queen Mary and White & Case survey), which concluded that arbitration is by far the favourite dispute resolution mechanism for international disputes, whilst Dutch courts are favoured for domestic ones.

The morning sessions ended with a panel discussion between, R.A. DUDOK VAN HEEL (Senior Judge of the Amsterdam District Court and the Netherlands Commercial Court, Amsterdam), Françoise Lefèvre (Partner at Linklaters, Brussels) and Niek PETERS (Partner at Cleber, Amsterdam), led by Adam BADAWI (Professor at UC Berkeley). This lively session was an excellent opportunity for the audience to hear about the handling of the first cases by the recently set up Netherlands Commercial Court. The Belgian lawyers were reminded that the timeline of a potential creation of a Brussels International Business Court was as foggy as the Brexit one, which is perhaps no coincidence as one of the main rationales for this proposed new court was to attract Brexit-related disputes…

After the traditional lunch cruise on the Amsterdam canals, the afternoon was launched by a second panel discussion,

on the challenges and opportunities that investment courts may bring to investment arbitration. The panel, moderated by Gabriel BOTTINI (Partner, Uría Menéndez, Madrid), was composed of Matthias KUSCHER (Partner, De Brauw Blackstone WESTBROEK, Amsterdam), Chin Leng LIM (Professor at The Chinese University of Hong Kong and Barrister, Keating Chambers, London), Margaret Clare RYAN (Counsel, Shearman & Sterling, London) and Jeff SULLIVAN (Partner, Gibson, Dunn & Crutcher, London).

The participants could then choose among three break-out sessions. The first one, on enforcement of arbitral awards against states and state immunity: international developments and recent case law, was animated by Hannah VAN ROESSEL (Director and Senior Legal Counsel, Omni Bridgeway, Amsterdam), Hakim BOULARBAH (Partner, Loyens & Loeff, Brussels), Monica FERIA-TINTA (Barrister, Twenty Essex, London), Gerard MEIJER (Partner, Linklaters, Amsterdam, and President of the Executive Board of the Netherlands Arbitration Institute), and Freerk VERMEULEN (Partner, NautaDutilh, Amsterdam). The second panel – composed of Melanie VAN LEEUWEN (Partner, Derains & Gharavi, Paris), Daniel COOPER (Partner, Covington & Burling, London), Kim LUCASSEN (Partner, Loyens & Loeff, Rotterdam) and Kathleen PAISLEY (Partner, Ambos NBGO, Brussels) – discussed the protection of personal data in arbitration in light of the GDPR. The participants could also enjoy an art tour of the collections of the Hermitage.

Finally, Gerard MEIJER briefly introduced Camilla PERERA-DE WIT, the new Secretary-General of the Netherlands Arbitration Institute.

BY GUILLAUME CROISANT

LECTURER, UNIVERSITÉ LIBRE DE BRUXELLES

ASSOCIATE LINKLATERS LLP

L'ARBITRAGE ET LE DROIT DES SOCIÉTÉS – ARBITRAGE EN VENNOOTSCHAPPEN

CEPANI 50TH ANNIVERSARY – MORNING COLLOQUIUM

14 NOVEMBER, BRUSSELS

Report on the morning colloquium on " l'arbitrage et le droit des sociétés –

arbitrage en venootschappen".

The day after a great Kick-off party, CEPANI's 50th anniversary celebrations began, in a more serious way, with a very interesting colloquium on the theme "L'arbitrage et les sociétés – Arbitrage en vennootschappen".

The colloquium opened with a word from the President of the CEPANI, Dirk DE MEULEMEESTER, who introduced Professor Doctor Emeritus Guy KEUTGEN, honorary president of the CEPANI, who presided the colloquium.

As an introduction, Didier MATRAY (Matray Matray & Hallet) explained the benefits of arbitration for the resolution of corporate law disputes, including the advantages of provisional measures and emergency arbitration and shared ideas from our German neighbours. Next, the first keynote speakers Stan BRIJS and Karen PARIDAEN (NautaDutilh) discussed the issue of the arbitrability of company law disputes (occurring at the incorporation, operation or dissolution stages).

Mr. BRIJS and Ms. PARIDAEN addressed the issues posed by the introduction of a

black list in the Code of Economic Law by the Law of 4 April 2019 (the B2B Law) which, among others, lists as abusive any clause intended to "cause the other party to renounce any means of recourse against the company" and by the unfortunate wording of the legislator who interpreted this provision in the preparatory works as also referring to arbitration clauses. Both speakers further pointed out that legal doctrine and scholarly articles were more needed than ever to challenge the legislator's at times unfortunate choice of words.

The colloquium continued with a presentation by Olivier CAPRASSE (Olivier Caprasse law firm) regarding the arbitration agreement in company law. Mr. CAPRASSE began his speech by presenting some issues concerning disputes "with" companies, namely (i) the situation of groups of contracts and (ii) the question whether companies in a group are all bound by an arbitration clause accepted by one of them. Mr. CAPRASSE then tackled issues in relation to disputes "within" a company, namely the wording of the arbitration clause and the place where the clause needs to be inserted (articles of association, etc.).

After a short coffee break, Patrick VAN LEYNSEELE and Charline AMPE (Daldewolf) took the floor for the third presentation, discussing how to apply the different means available to settle company law disputes. Their presentation addressed in particular the new Company and Association Code, Articles 1731 et seq. of the Judicial Code and the role of mediators.

Next was a presentation from Didier LECLERC (BDO Legal) and Sophie GOLDMAN (Tossens Goldman Gonne) on selected issues in post-acquisition arbitrations. They started by exposing the recurrent problems regarding buyer's information and establishment of seller's fraud. Next they tackled the issues surrounding guarantee clauses and determination of damages. They

concluded their presentation with a brief overview of some procedural issues, including the specificities of presenting evidence and evaluating damages in arbitration.

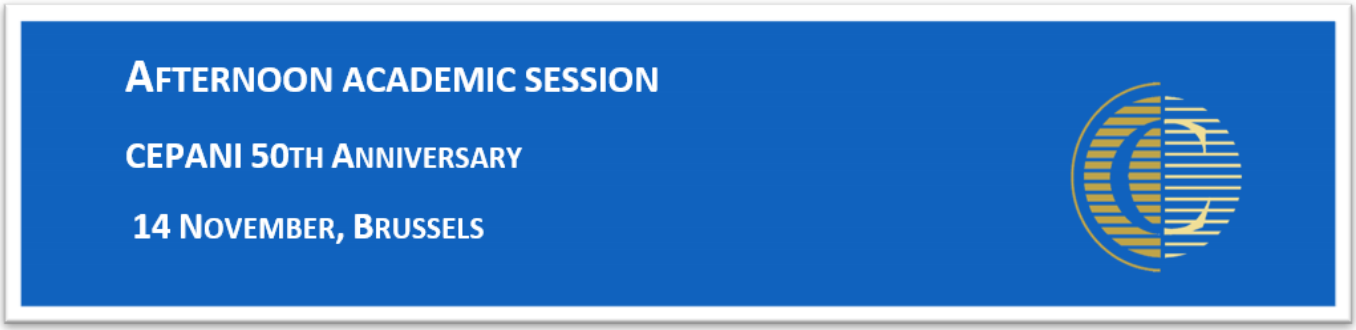
The colloquium ended with a final address by the Vice-President of the CEPANI, Professor Philippe LAMBRECHT, highlighting the flexibility of the new Company and Association Code and the (long-awaited) changes it has brought.

This thoughtful morning ended with a well-deserved traditional walking lunch before continuing with the afternoon program.

Dirk DE MEULEMEESTER'S introduction speech

BY CLAIRE LARUE

ASSOCIATE LOYENS & LOEFF



Report on the afternoon academic session – CEPANI 50th ANNIVERSARY.

On 14 November 2019 in the afternoon, as part of the celebrations for its 50th anniversary, CEPANI organized an academic session at BOZAR where legal arbitration experts from various arbitral institutions gathered to discuss the key similarities and differences between arbitral institutions regarding (i) the appointment of emergency arbitrators; (ii) the composition of arbitral tribunals; (iii) the conduct of arbitration; (iv) expedited proceedings; (v) scrutiny and control of arbitral awards; and (vi) costs. The discussion was moderated by Mr ANDREA CARLEVARIS (BonelliErede).

First, on the issue regarding the appointment of emergency arbitrators, Ms Annette MAGNUSSON (Secretary General of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC)) highlighted the fact that, while the notion of emergency arbitrator is now perceived as something normal, it was originally seen as a threat to the regular arbitration proceedings. She also emphasized that, as a rule, the SCC seeks to appoint an emergency arbitrator within 24 hours of receiving the application and any emergency decision on interim measures shall be made not later than 5 days from the date upon which the application was referred to the emergency arbitrator.

Secondly, the panel discussed the issues regarding the composition and constitution of arbitral tribunals. To this end, Mr Dirk DE MEULEMEESTER (President of CEPANI) explained CEPANI's Appointing Committee's role in scrutinizing the disclosures made by potential arbitrators.

Thirdly, the panellists discussed various issues regarding the conduct of arbitration proceedings. More particularly, the panel discussed the question of whether arbitral institutions were allowed to administer arbitration cases under other rules than their own. On this point, Ms Irene WELSER (Board member of the Vienna International Arbitration Centre (VIAC)) emphasized the fact that, contrary to the CEPANI arbitration rules, VIAC is entitled to administer cases conducted pursuant to other rules than the Vienna Rules (unless those proceedings would deviate fundamentally from the Vienna Rules). She further explained that the possibility offered to VIAC to administer cases conducted pursuant to other rules than the Vienna Rules allows flexibility and is a useful tool to maintain the coherence of defective arbitration clauses.

Fourth, Mr Viktor VON ESSEN (Deputy Secretary General of the German Arbitration Institute (DIS)) discussed the ways expedited proceedings were being managed and organized. Ms Annette MAGNUSSON (SCC) further emphasized that if the parties opt to use expedited proceedings, they must accept that "the costume is tighter than the regular proceedings" and that not all the elements of traditional arbitration (such as document production or witness statements) are available in such expedited proceedings.

Fifthly, commenting on the inclusion, in the 2020 new CEPANI rules, of a mandatory scrutiny mechanism for arbitral awards, Mr Marc HENRY (President of the Association Française d'Arbitrage) highlighted that only half of the arbitral institutions in the world provided for such mechanism in their arbitration rules. He also stressed that the fact that an arbitral institution offers such mechanism does not appear to be a key criterion when parties select a particular arbitral institution to administer their case.

Finally, on the issue of costs, Mr Gerard MEIJER (President of the Netherlands Arbitration Institute (NAI)) noted that costs vary among arbitration institutions but that those costs depended upon the services offered by each arbitral institution.

The academic session was then concluded with a short presentation, by Benoît KOHL (Stibbe/University of Liège) and Maxime BERLINGIN (Fieldfisher) of the

Liber Amicorum edited on the occasion of the CEPANI's 50th anniversary, and by a presentation of the special edition of b-Arbitra by Jean-François TOSSENS (Tossens Goldman Gonne) and Annet VAN HOOFT (Van Hooft Legal).

BY QUENTIN DECLÈVE

ASSOCIATE VAN BAEL & BELLIS

GALA DINNER AT BOZAR

CEPANI 50TH ANNIVERSARY

14 NOVEMBER, BRUSSELS

CEPANI 50TH ANNIVERSARY : GALA DINNER AT BOZAR.

On the evening of 14 November 2019, CEPANI organized a Gala Dinner in one of the most iconic building in Brussels, the Bozar, designed by the famous Belgian architect Victor Horta. The event was attended by more than 230 arbitration and ADR practitioners from Belgium and abroad.

The Gala started with a cocktail reception and was followed by a sumptuous diner accompanied by live music. Mr. Dirk DE MEULEMEESTER (the President of CEPANI) delivered a hilarious speech – to the level of some of the best White House correspondents' dinner speeches – made of anecdotes on the CEPANI's most legendary members and tributes to the CEPANI's management team, stressing the organizational skills (and Spartan text messages) of Ms. Emma VAN CAMPENHOUDT (CEPANI's Secretary General) and the linchpin behind the flawless orchestration of the celebrations.

Dirk DE MEULEMEESTER's introduction speech

During the dinner, some of the most prominent figures of CEPANI, Prof. Guy KEUTGEN (honorary President), Prof. Bernard HANOTIAU (honorary Vice-President) and Ms. Vanessa FONCKE, (former co-chair of CEPANI 40), addressed the audience to share their finest memories.

More than 230 guests attended the gala

The night of 14 November 2019 will surely be remembered as one of the most enchanting gathering of arbitration and ADR specialists under the shining stars of the capital of Europe.

ARTIFICIAL INTELLIGENCE, BLOCKCHAIN AND INTERNATIONAL ARBITRATION – WHAT TO EXPECT ?

CEPANI 50TH ANNIVERSARY – CEPANI40 MORNING DEBATE

15 NOVEMBER, BRUSSELS

Report on the CEPANI40 morning debate on Artificial Intelligence, Blockchain and International Arbitration – What to Expect ?

To close the celebrations for the 50th anniversary of CEPANI, Stibbe's Brussels office hosted a CEPANI 40 morning debate on a highly enticing and hot topic: Artificial Intelligence, Blockchain and International Arbitration – What to Expect ?

A generous breakfast and a foggy morning view from the 13th floor of the Central Plaza building awaited the enthusiastic participants after the memorable gala dinner of the preceding night at Bozar.

After a word of welcome by Nicolas RÉSIMONT (Stibbe) and introductory remarks by Sophie GOLDMAN (Tossens Goldman Gonne), a brilliant keynote speech was given by Sophie NAPPERT (3VB), enabling everyone in the room to share the same basic concepts and thus setting the ground for the panel discussions that followed. Ms. NAPPERT insisted on the fact that the impact of new technologies, such as AI and blockchain, on international arbitration is not a matter of the future but very much of the present and that it cannot simply be ignored by practitioners given that it questions some of the core values of international arbitration. She also introduced the audience to Kleros, an online dispute resolution protocol which uses blockchain and crowdsourcing to adjudicate disputes and which claims to bring "justice for the unjusticed", just as Bitcoin brought "banking for the unbanked". In a nutshell, Kleros is a decentralised court system allowing arbitration of smart contracts by crowdsourced jurors relying on economics incentives. It has the ambition to become a proxy for

arbitration in a range of contractual disputes, from very simple to highly complex ones.

A captivating panel debate then kicked off. Next to Sophie NAPPERT, the panel was composed of Clément LESAEGE (CTO of Kleros), Gauthier VANNIEUWENHUYSE (Hogan Lovells) and Niuscha BASSIRI, (Hanotiau & van den Berg), acting as moderator.

Gauthier VANNIEUWENHUYSE, Niuscha BASSIRI, Clément LESAEGE and Sophie NAPPERT moderating the debate.

Each of the panelists shared their views on the interplay that should take place between new technologies and international arbitration and answered questions from the audience, often sparking heated reactions. Mr. LESAEGE provided useful explanations on the functioning of Kleros, while Mr. VANNIEUWENHUYSE translated some of the key concepts into layperson's terms, or should I say lawyer's terms. The exchanges were brilliantly steered by the moderator, Ms. BASSIRI, who did not hesitate to step in at times to redirect the debate or to provide her own opinion.

A key take-away came from Ms. NAPPERT who stressed the need for strengthened communication channels between international arbitration practitioners and experts in new technologies, to the benefit of all actors involved and to help extend the limits of the current construct of international arbitration.

The morning debate ended with closing remarks and acknowledgments by Benoît KOHL (Stibbe) and Sigrid VAN ROMPAEY (Matray, Matray & Hallet), followed by a pleasant walking lunch during which the audience had the opportunity to prolong the discussion with the speakers in smaller circles. Many tha nks to all attendees!

BY NATHAN TULKENS

AVOCAT - ADVOCAAT CLIFFORD CHANCE

!!! CEPANI/CEPANI40 ACTIVITIES IN 2020 !!!

REPORT ON THE 71ST UNCITRAL WORKING GROUP II MEETING

MONDAY 3 TO 7 FEBRUARY 2020

For a number of years, CEPANI has participated as an observer to the activities of Working Group II of the United Nations Commission on International Trade Law (UNCITRAL). From the 3rd to the 7th of February 2020, the seventy-first session of this Working Group took place in New York, which was attended by a CEPANI delegation consisting of CEPANI President Dirk De Meulemeester, Secretary-General Ms Emma Van Campenhoudt as well as CEPANI members Mr. Maxime Berlingin, Mr. Maarten Draye and Ms. Vanessa Foncke.

At its fifty-first session, the UNCITRAL Commission decided to mandate Working Group II to take up issues relating to expedited arbitration. Accordingly, at its sixty-ninth session in New York and its seventieth session in Vienna, the Working Group commenced its consideration of issues relating to expedited arbitration.

During these sessions, the Working Group agreed on focusing on establishing an international framework on expedited proceedings, without any prejudice as to which form this would take (set of rules, model clauses, guidance texts, or other). Following these two sessions, the UNCITRAL Secretariat was requested to prepare draft texts on expedited arbitration, bearing in mind that the decision to determine the final presentation of the expedited arbitration provisions ("EAP") would be taken at a later stage. During the seventy-first session Working Group II, chaired by Mr. Andrés Jana (Chile) proceeded with the consideration of the draft EAP as prepared by the Secretariat.

The main discussions related to the scope of the EAP, the notice of arbitration and the designating and appointing authority.

Regarding the scope of the EAP, it was agreed that for the EAP to apply, an express

agreement of the parties would be required. Express consent is retained as sole criterion for EAP to apply.

With respect to the notice of arbitration, the question was raised whether it should be treated as a statement of claim. The Working Group agreed that the notice of arbitration and the response thereto as well as the statement of claim and defense should be examined taking into account the time frames in the EAP and the need to ensure an expedited process. The Secretariat was requested to provide possible options for further consideration.

Another point raising particular questions relates to the appointment of the arbitrator and the designating and appointing authority. The Working Group agreed that parties should jointly agree on a sole arbitrator in expedited arbitration, if possible. The Working Group generally felt that a short time period should be provided to allow the parties to reach an agreement. In the absence of an agreement by the parties, an appointing authority would become involved at the request of one of the parties. After lengthy discussion, the Working Group agreed that the EAP should provide that, if the parties were not able to agree on the choice of an Appointing Authority within a fixed time period, any party could make the request to the Secretary General of the PCA to either designate the appointing authority or to act as Appointing Authority. Lastly, it was agreed that considering the importance of the parties agreeing on an Appointing Authority in Expedited Proceedings, the Working Group would consider how that aspect could be further emphasized in the model arbitration clause.

At the end of the session, the Secretariat was requested to prepare a revised draft of the EAP as an appendix to the UNCITRAL Arbitrations Rules without prejudice to the decision of the Working Group on the final presentation of the EAP. The Secretariat was further requested to address the interaction between expedited arbitration provisions and the UNCITRAL Arbitration rules, and to provide an overview of the different time frames that would be applicable in expedited proceedings.

Tentative dates for the seventy-second meeting in Vienna are 21 to 25 September 2020.

BY EMMA VAN CAMPENHOUDT

SECRETARY GENERAL CEPANI

WHAT'S THE SEAT GOT TO DO WITH IT?

WEDNESDAY 8 JULY 2020

DEALING WITH CONTRACT BREACHES IN TIMES OF COVID-19

MONDAY 28 SEPTEMBER 2020

VIRTUAL TOUR OF THE ICC COURT OF ARBITRATION

FRIDAY 13 NOVEMBER 2020

Tentative Draft program subject to confirmation of ICC Court:

- 10:00 – 10:30 Welcome address and recent developments at the ICC International Court of Arbitration and the Secretariat
- 10:30 – 11:00 Presentation of the ICC Commission on Arbitration and ADR activities, its latest reports and update on the different task forces
- 11:00 – 11:30 Recent experience and statistics with Belgian parties in ICC Arbitrations Counsel
- 11:30 – 12:00 Roundtable discussion on the practices of the ICC International Court of Arbitration
- 12:00 – 12:30 Presentation of the ICC International Centre for ADR: Mediation, Expertise, Dispute Boards and DOCDEX Rules

COLLOQUE ANNUEL DU CEPANI/ JAARLIJKS COLLOQUIUM VAN CEPANI ARBITRAGE & FRAUDE

THURSDAY 26 NOVEMBRE 2020

I. L'arbitrage et les différents types de fraude – M. Simon GREENBERG
II. Vaststelling van fraude gepleegd voorafgaand aan de inleiding van de arbitrage – Prof. Filip DE LY
III. L'utilisation de l'arbitrage à des fins frauduleuses – M. Sébastien Ryelandt
IV. Fraude gepleegd gedurende de procedure – De Heer Maarten Draye
V. La fraude et les normes internationales – M. Thierry TOMASI
VI. Gekozen procedurevragen – Mvrw. Vanessa FONCKE
VII. La fraude et la sentence – M. Gautier MATRAY
VIII. « Fraude en arbitrage: debat voorgezeten door mevrouw Maude Lebois » / « la fraude et l'arbitrage: débat présidé par Madame Maude Lebois »

WERKGROEPEN

REVISION CEPANI ARBITRATION RULES

PRESIDENT OF THE STEERING GROUP:

Dirk DE MEULEEESTER

STEERING GROUP:

Benoît ALLEMEERSCH

Olivier CAPRASSE

Benoît KOHL

MEMBERS:

Marc DAL

Werner EYSKENS

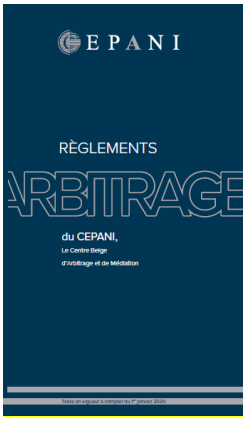
Didier MATRAY

Jean-François TOSSENS

Emma VAN CAMPENHOUDT

Patrick VAN LEYNSEELE

Herman VERBIST



<u>Evolution, not revolution – CEPANI modernizes its rules and goes digital.</u>

At the occasion of half century celebration, CEPANI, the Belgian Centre for Arbitration and Mediation, revised its Arbitration Rules.

The new Rules, which have been reviewed by leading arbitration specialists, came into force on January 1, 2020. They will apply to all proceedings introduced as from January 1, 2020, unless the parties have expressly provided that the rules in force at the time the arbitration agreement was concluded apply.

The 2020 Rules retain the main features of the 2013 version, including the establishment of terms of reference at the outset of the proceedings and the possibility for parties to

turn to an emergency arbitrator for urgent measures pending the constitution of the arbitral tribunal.

The revision of the Rules aims at bringing CEPANI arbitration even more in line with the latest trends and developments within the international commercial arbitration community. A further objective is to meet the increased demands for security, while at the same time continuing to achieve efficient, rapid and legally sound resolution of disputes.

Various provisions of the Rules were fine-tuned, completed or clarified. These changes codify CEPANI's practices, address issues that have arisen in practice and incorporate innovations inspired by international arbitration practice.

One of the most striking new features is that the CEPANI arbitration rules are no longer divided into two separate sets of rules. Whereas the 2013 Rules contained a separate set of expedited rules for claims of limited value in Section II, this body of rules is now incorporated in the main Rules. The accelerated procedure is applicable if the amount in dispute does not exceed a total of € 100.000, unless otherwise agreed. Previously, this procedure was available only for main claims not exceeding € 25,000.

In addition, the 2020 Rules introduce a mandatory formal review of all draft arbitral awards by the CEPANI Secretariat. This review aims at ensuring that all arbitral awards rendered by an arbitral tribunal under the CEPANI Rules complies with all formal requirements, which will in turn reduce the chance of a successful challenge.

Last but not least, the rules are moving into the digital age to increase efficiency and reduce costs. Electronic communication becomes the default rule under the 2020 Rules for all communications between the CEPANI secretariat, the arbitral tribunal and the parties. CEPANI will also continue using a secure online platform where the entire file is accessible to the parties and the arbitral tribunal.

DIGITAL ARBITRATION

VOORZITTER:

Dirk VAN GERVEN

LEDEN:

Tom HEREMANS

Camille LIBERT

Mathieu MAES

Kevin ONGENAE

Flip PETTILLION

Emma VAN CAMPENHOUDT

Herman VERBIST

Met de lancering van de werkgroep Digital Arbitration zette CEPANI vorig jaar de weg van de digitalisering in. De werkgroep zorgde het afgelopen jaar onder meer voor een aantal belangrijke amendementen aan het CEPANI Reglement 2020 met het oog op de digitale procesvoering. De COVID-crisis heeft aangetoond dat dit een bijzonder nuttige oefening was.

Voor het komende jaar staat vooral de volledige digitalisering van de domeinnaamprocedure in de steigers, alsook een aantal kleinere projecten zoals de elektronische ondertekening van procedurestukken, een tevredenheidsenquête over het CEPANI 'BOX' platform, het voorzien van praktische richtlijnen voor de organisatie van zittingen via video conference, etc.

Recht en praktijk staan wat digitalisering betreft niet stil en CEPANI volgt steeds de laatste evoluties op!

PROMOTIE VAN ARBITRAGE

VOORZITTER:

Philippe LAMBRECHT

LEDEN:

Patrick BAETEN

MAXIME BERLINGIN

MARC DAL

Quentin DECLEVE

DIRK DEMEULEMEESTER

JULIE DUTORDOIR

Benoit FERON

Michel FLAMEE

Benjamin JESURAN

Françoise LEFEVRE

Gautier MATRAY

Mathieu MAES

Lydie ROULLEAUX

Emma VAN CAMPENHOUDT

Dirk VAN GERVEN

Durant l'année 2019, les membres du groupe de travail ont œuvré à la promotion de l'arbitrage.

Ils ont notamment présenté l'arbitrage à de nombreux étudiants d'universités et de hautes écoles (ICHEC, Gand, UCLouvain, Université Saint-Louis, ULB et ULG).

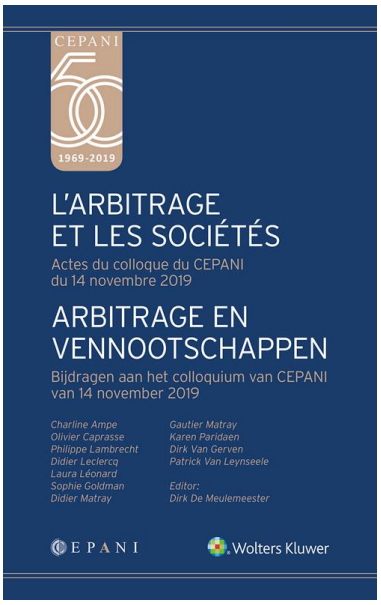
HUB Brussels et le CEPANI ont poursuivi leur collaboration pour mettre en avant l'expertise en terme d'arbitrage à Bruxelles, en organisant de multiples événements à cet effet.

Par ailleurs, les synergies développées avec l'IJE (l'institut des juristes d'entreprise) continuent de se renforcer et le CEPANI est en contact régulier avec le notariat et différents barreaux.

Enfin, la célébration des 50 ans du CEPANI a contribué à l'essor de l'arbitrage et le nouveau site internet, encore plus intuitif que l'ancien, s'inscrit dans cette même perspective de promotion de l'arbitrage. Le site contient des vidéos capsules très instructives et ludiques.

PUBLICATIONS

OUVRAGES SCIENTIFIQUES



Les meilleurs spécialistes de la matière y étudient des thèmes d'actualité relatifs aux litiges pouvant naître au sein des sociétés ou du fait de la vie de celles-ci, et leur résolution par voie d'arbitrage ou en combinaison avec d'autres ADR. Dans ce contexte, sont abordés l'arbitrabilité des litiges sociétaires, la place de la convention d'arbitrage, la combinaison arbitrage-ADR, les différends post-acquisitions et bien sûr l'incidence du nouveau code des sociétés et associations.

Le colloque « Arbitrage et entreprises » se révèle à plus d'un titre particulièrement approprié pour célébrer les 50 ans du CEPANI. Les dossiers qui sont résolus conformément au règlement d'arbitrage du CEPANI ont trait, pour la plupart, à des différends liés au droit des sociétés. De nombreux arbitres belges sont d'ailleurs des spécialistes du droit des sociétés.

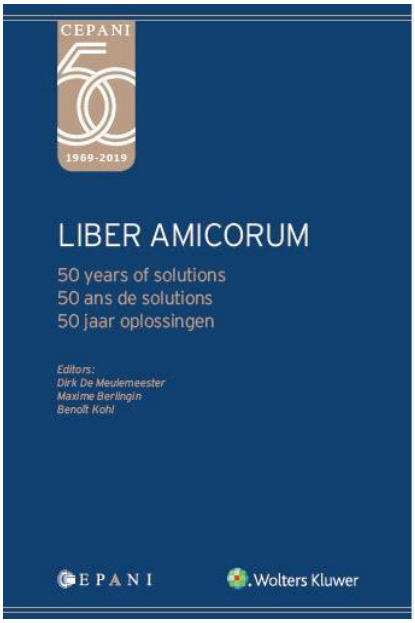
Avec la récente adoption du nouveau Code des sociétés et des associations, le thème ainsi abordé prend tout son sens.

***

De beste specialisten op het terrein bestuderen er actuele kwesties met betrekking tot geschillen die kunnen ontstaan binnen bedrijven of vanwege hun bestaan, en hun oplossing door middel van arbitrage al dan niet in combinatie met andere ADR-methoden. In deze context, wordt de arbitreerbaarheid van vennootschapsgeschillen behandeld, de plaats van de arbitrageovereenkomst, de combinatie arbitrage-ADR, de geschillen na overname en uiteraard de impact van het nieuwe Wetboek van Vennootschappen en Verenigingen.

Het colloquium 'Arbitrage en Vennootschappen' is om meerdere redenen het meest gepaste thema om 50 jaar CEPANI te vieren. Vennootschapsgeschillen vormen een belangrijk deel van de geschillen die overeenkomstig het CEPANI-Arbitragereglement worden beslecht. Heel wat van onze Belgische arbiters hebben een uitgesproken profiel als specialist in het vennootschapsrecht.

Uiteraard is het nieuwe Wetboek van Vennootschappen en Verenigingen de belangrijkste reden.



A Liber Amicorum was published to celebrate CEPANI's important milestone.

The Liber Amicorum is dedicated to arbitration and Alternative Dispute Resolution in all its aspects. More than 40 highly recognised professionals in the field of arbitration both at an national and an international level have accepted the invitation to write a text in the Liber Amicorum.

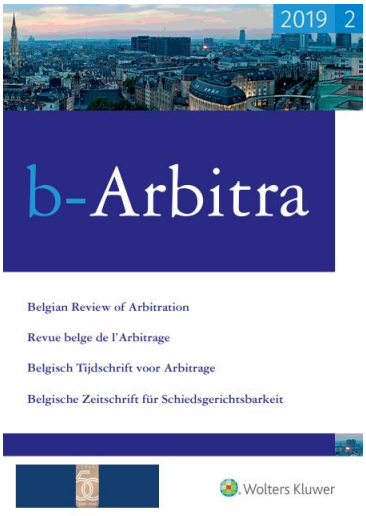
Please note that the contributions of this book are written in French, Dutch and English.

NEWSLETTER

CEPANI publiceert maandelijks een nieuwsbrief met korte informatieberichten omtrent arbitrage en CEPANI. Deze nieuwsbrief wordt elektronisch gepubliceerd en is beschikbaar op onze website.

Veel dank aan Maxime Berlingin, Maarten Draye, Sophie Goldman en Sigrid Van Rompaey die er elke maand voor de publicatie van instaan.

B-ARBITRA



b-Arbitra, la revue belge pour l'arbitrage, est une initiative du CEPANI, le Centre belge d'arbitrage et de médiation. La revue semestrielle comprend des contributions en anglais et dans les trois langues officielles de la Belgique, qui sont le français, le néerlandais et l'allemand. Chaque article est accompagné d'un résumé en anglais. Les contributions qui y sont

publiées sont soumises à une relecture scientifique, suivant la procédure du peer-review.

b-Arbitra entend soutenir la recherche scientifique sur des questions fondamentales en relation avec l'arbitrage et promouvoir une analyse critique et innovatrice de ces questions ainsi que des thèmes plus concrets qui sont importants pour le public de l'arbitrage. La revue veut également engager un débat sur de nouvelles questions dans le domaine de l'arbitrage et constituer un forum pour l'échange d'information en Europe, à la lumière de l'internationalisation de l'arbitrage et de l'accroissement des litiges transfrontaliers.

Le comité de rédaction est composé des personnes suivantes:

Caroline Verbruggen et Maarten Draye, Rédacteurs en chef et Lisa Bingham, Olivier Caprasse, Luc Demeyere, Werner Jahnel, Guy Keutgen, Jan Kleinheisterkamp, Maud Piers, Erica Stein, Herman Verbist et Caroline Verbruggen, Annet van Hooft et Jean-François Tossens.

Le conseil scientifique quant à lui reprend Georges-Albert Dal, Filip De Ly, Antonias Dimolitsa, Johan Erauw, Michel Flamée, Bernard Hanotiau, Pierre Karrer, Guy Keutgen, Stefan Kröll, Thalia Kruger, Philippe Lambrecht, Francoise Lefèvre, Didier Matray, Pierre Mayer, Piet Taelman, Hans Van Houtte.

STATISTICAL OVERVIEW

INTRODUCTORY NOTE

This yearly report provides a statistical overview of **CEPANI** arbitration in 2019 and the evolution in comparison with past years.

In this report, you will find information about proceedings administered by **CEPANI** such as the origin of the Parties, the language and the seat of the arbitration, the constitution of Arbitral Tribunals, the specificities of the appointed Arbitrators, the average duration of a CEPANI arbitration procedure and more.

The 2019 statistics show a general trend of internationalisation in comparison with the previous years. Indeed, CEPANI administers more and more procedures with an international element which is reflected in either the origin of the Parties, the language or the seat of the arbitration.

Moreover, the average duration of CEPANI arbitration proceedings seems to have dropped sharply in 2019.

Finally, **CEPANI** continues its commitment to ensure that each case is handled with the requested efficiency, rapidity, and efficacy, and in accordance with the specific needs of the Parties.

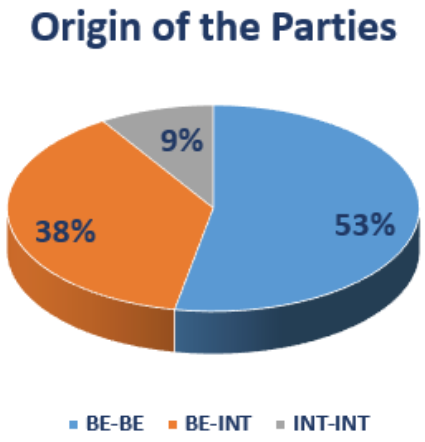
PARTIES

GEOGRAPHICAL ORIGIN

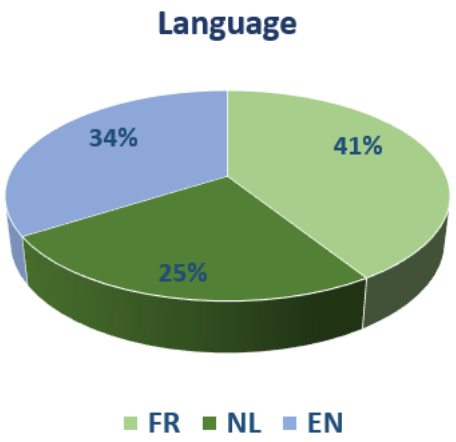
France	1
Germany	4
Luxembourg	2
Mauritius	2
Netherlands	3
Portugal	1
Russia	1
Senegal	1
Switzerland	2
Turkey	1
United Kingdom	1
United States	1

In 2019, 53% of the cases were introduced between Belgian Parties, 38 % between at least one Belgian and an International Party, and 9% of the cases were introduced between only International Parties.

This means that, compared to 2018, procedures between a Belgian and an International Party have increased by 10%, and procedures exclusively involving International Parties have increased by 6%.

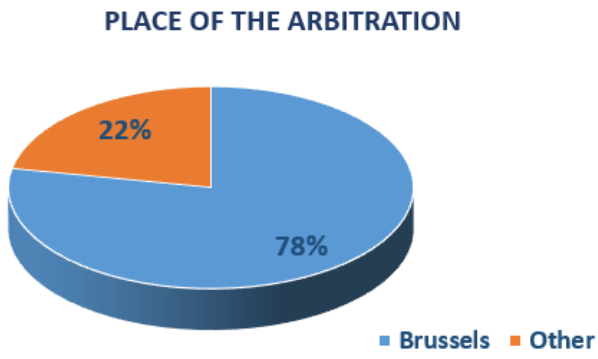


LANGUAGE



In 2019, there has been an increase of the English cases compared to 2018. Indeed, 34% of the cases were introduced in English, 25% in Dutch and 41% in French.

PLACE OF ARBITRATION

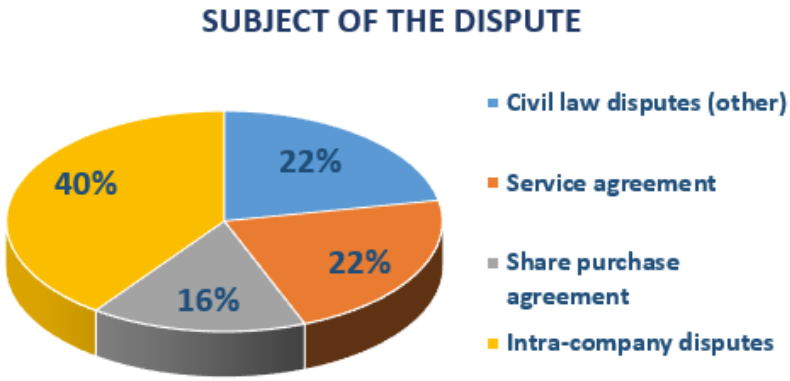


Brussels as place of arbitration is a steady trend.

In 2019, 78% of the cases had Brussels as seat of arbitration and 22% of the cases had their seat in another city.

In comparison to 2018, 82% of the cases had Brussels as seat of arbitration and 18% of the cases had their seat in another city.

NATURE OF THE DISPUTE

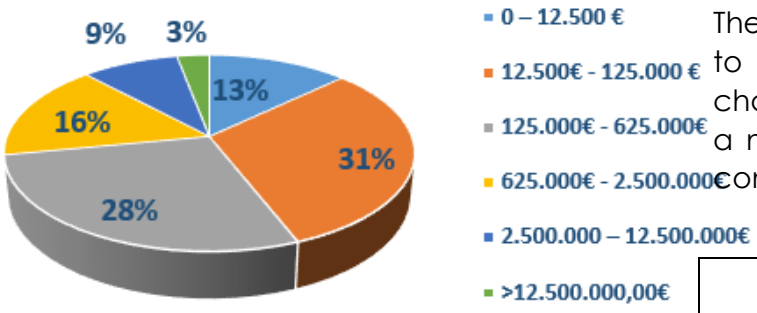


In 2019, 22% of the cases concerned general issues of civil law;
22% related to a service agreement;
16% related to a share purchase agreement;
40% related to an intra-company dispute.

In comparison to 2018, intra-company related disputes cases have increased.

AMOUNT IN DISPUTE

AMOUNT

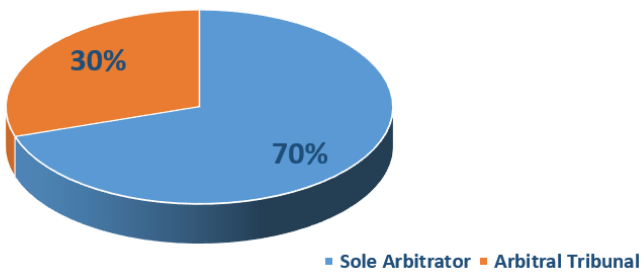


0 – 25.000€	13%
25.000€ - 125.000€	31%
125.000 € - 625.000€	28%
625.000€ - 2.500.000 €	16%
2.500.000€ – 12.500.000€	9%
> 12.500.000€	3%

ARBITRAL TRIBUNAL

CONSTITUTION

COMPOSITION OF THE ARBITRAL TRIBUNAL



The majority, *i.e.* 70%, of the Arbitral Tribunals were composed of a Sole Arbitrator. 30% of the Tribunals were composed of three Arbitrators.

The trend remains steady in comparison to 2018, yet still marks an important change when compared to 2017, when a majority of the Arbitral Tribunals were composed of three Arbitrators.

	Proposed and appointed by the Appointment Committee	Proposed by the Parties / confirmed by the Appointment Committee
Chairman of the Arbitral Tribunal composed of three Arbitrators	22%	75%
Arbitral Tribunal composed of a Sole arbitrator	78%	25%

In 2019 no emergency Arbitrator was appointed.

WOMEN IN ARBITRATION

In 2019, 9% of the Arbitrators appointed by CEPANI were women, 75% of which were appointed by the CEPANI Appointments Committee and 25% directly by the Parties.

CHALLENGES AND REPLACEMENTS OF ARBITRATORS

In 2019, no Arbitrator was challenged nor replaced.

AVERAGE DURATION OF CEPANI PROCEEDINGS IN 2019

In 2019, in comparison with 2018 when arbitration proceedings lasted over an average of 15 months, an arbitration procedure administrated under the CEPANI Rules lasted **12,5 months,** calculated as follows:

- Introduction to the constitution of the Arbitral Tribunal = 2,5 months.

The CEPANI Rules provide for a one-month deadline for Parties to pay the provision for arbitration costs and the Appointments Committee shall only appoint the Arbitral Tribunal when the provision for arbitration costs is paid in full.
The delay of 2,5 months in practice is due to delays regarding the payment of the provision for arbitration costs by the Parties.

- Constitution of the Arbitral Tribunal to the Terms of Reference = 2 months.

As provided for by the Rules. One must note the 2020 Arbitration Rules now provide for a one-month deadline.

- Terms of Reference to the Award = 8 months.

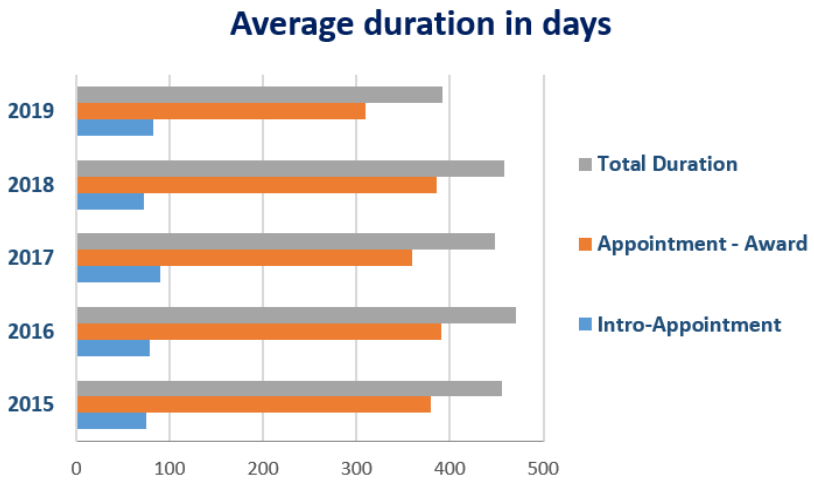
When drawing up the Terms of Reference, or as soon as possible thereafter, the Arbitral Tribunal will organise a case management meeting between the Arbitral Tribunal and all Parties involved in the proceedings. This meeting may take place in person or via telephone or video conference. After having consulted the Parties, the Arbitral Tribunal will draw up in a separate document the Procedural Timetable.

It is recommended that the Parties not only send their Counsel to attend this meeting, but to also be present themselves. This may positively influence the time limits agreed upon.

The CEPANI Rules grant the Arbitral Tribunal a deadline of six months to render its Award as from the signature of the Terms of Reference. The average time limit of 8 months is due to the fact that, with the Parties' consent, Arbitral Tribunals often establish procedural timetables exceeding – and thus extending – the six month deadline provided for in the CEPANI Rules.

Constitution of the Arbitral Tribunal to the Award = **8 months**

Total average duration of CEPANI arbitrations in 2019: **12,5 months**



BEHEER VAN CEPANI

Dirk De Meulemeester

Voorzitter

(06.2014 – 06.2020)

Philippe Lambrecht

Vice- Président

(09.2017-…)

Didier Matray

Vice- Président

(06.2014-…)

Maud Piers

Vicevoorzitter

(06.2017-…)

Dirk Van Gerven

Vicevoorzitter

(06.2014-…)

Emma Van Campenhoudt

Secrétaire – Générale

(09.2017-…)

Lydie Roulleaux

Attachée juridique

(02.2019 - …)

Camille Libert

Juridisch attaché

(03.2015 - …)

LEDENAFDELING

In **2019** viel ons de eer te beurt om als leden te mogen verwelkomen:

Michelle BOCK

Guy BLOCK

Cécile COUNE

Simon DERYCKERE

Philippe DESCHEEMAECKER

Jean-Marc DETHY

Matthew HAPPOLD

Bruno HARDY

Guy HARLES

Iuliana IANCU

Gérard KUYPER

Paul MAEYAERT

Alexandre MARTENS

Jan MEYERS

Xavier NYSSEN

Mathieu VAESSEN

Albert VERHOEVEN

Hoe lid worden?

Eénieder met belangstelling voor arbitrage of bemiddeling, ongeacht zijn/haar nationaliteit, kan lid worden van CEPANI.

De leden van CEPANI genieten de volgende voordelen:

- Een verminderde inschrijvingsprijs voor alle activiteiten van CEPANI;
- Een verminderde prijs voor de boeken en tijdschriften die CEPANI publiceert;
- Vermelding in de ledenlijst op de CEPANI-website;
- Vermelding in het repertorium van de CEPANI-leden.

Let wel: lidmaatschap van CEPANI biedt geen garantie of recht op een benoeming tot arbiter.
Iedere aanvraag tot lidmaatschap dient via het online formulier te worden bezorgd aan de voorzitter van CEPANI.

De aanvraag wordt op de eerstvolgende vergadering voorgelegd aan de Raad van Bestuur, die vervolgens beslist of de voorgelegde kandidatuur wordt aanvaard.

Overeenkomstig de statuten moet een kandidatuur steeds worden ondersteund door twee bestaande leden van CEPANI.

Vervolgens vragen wij u een recente versie van uw Curriculum Vitae te sturen aan info@cepani.be.

Tot slot dient u de twee bestaande leden te vragen hun ondersteuning van uw kandidatuur bekend te maken in een schrijven gericht aan de voorzitter van CEPANI per e-mail: evc@cepani.be

In 2019 bedraagt de prijs voor het lidmaatschap 250,00 EUR excl. BTW (302,50 EUR incl. BTW).
Het lidmaatschapsgeld omvat een jaarabonnement op het Belgisch tijdschrift voor arbitrage b-Arbitra.

Wij danken u alvast voor uw interesse in CEPANI en kijken er naar uit u te mogen verwelkomen op onze activiteiten!

BERICHT

CEPANI & COVID-19

The current COVID-19 crisis has affected businesses at a grand scale, not only with regard to their day-to-day activities, but also with regard to the fast and efficient resolution of their disputes. CEPANI provides a framework for dispute resolution which directly responds to parties' needs in the current crisis. This report provides an overview of the procedural tools and institutional rules offered by CEPANI which support a smooth and uninterrupted process in each phase of the arbitration proceedings. This includes the use of the innovative "Box" (the platform used by the arbitral tribunal, parties and the CEPANI Secretariat for exchange of all documents in relation to a case), the possibility to hold virtual hearings and to sign the Arbitral Award electronically.

I. Inleiding: zekerheid in onzekere tijden

Eerder dit jaar bereikte de COVID-19 pandemie ook België, en stak het de werking van bedrijven – en de economie in het algemeen – een stok in de wielen. Bedrijven, en in de eerste plaats de individuen die erachter staan, worden op onvoorstelbare wijze op de proef gesteld om de impact van de crisis te minimaliseren en terzelfder tijd de door de overheid opgelegde maatregelen te respecteren. Ook de juridische sector heeft zich moeten aanpassen, vaak met uitstel of zelfs afstel van gerechtelijke procedures tot gevolg.

In deze onzekere tijden biedt CEPANI een houvast voor partijen (potentieel) verwikkeld in een geschil. Het arbitrage instituut blijft de continuïteit van haar werkzaamheden garanderen. Deze bijdrage biedt een overzicht van de verschillende wijzen waarop CEPANI de noden van partijen in de huidige omstandigheden blijft beantwoorden, alsook proactief en innovatief hierop inspeelt. Enerzijds biedt het CEPANI Arbitragereglement in elke fase van de arbitrale procedure – die we hierna telkens kort overlopen – procedurele tools aan opdat partijen en arbiters vertragingen in de procedure kunnen

anticiperen en vermijden. Anderzijds wordt het administratief beheer van de dossiers zonder wijzigingen door CEPANI voortgezet, ook al gebeurt dit sinds 12 maart 2020 wel vanop afstand.

Arbitrage staat inderdaad synoniem voor een efficiënte, flexibele, en aangepaste geschillenbeslechting. De omkadering die CEPANI bewerkstelligt is hier geen uitzondering op, en het mag gezegd worden: op bepaalde vlakken zelfs een voorloper op andere instituten. Men denke bijvoorbeeld aan de introductie van een systeem van elektronische opslag van documenten reeds in 2016. Ook het nieuwe Arbitragereglement van januari 2020 legt de nadruk op digitale communicatie en elektronische uitwisseling van documenten.

Waar remote dispute resolution de nieuwe norm wordt in de voorzienbare toekomst, is het normaal dat partijen en arbiters zich vragen stellen met betrekking tot de mogelijkheid tot het houden van een virtuele zitting, uitspraken op grond van (elektronische) stukken, digitale communicatie, mogelijke case management technieken, of nog de validiteit of kennisgeving van Arbitrale Uitspraken in deze virtuele tijden. Zoals hierna uiteengezet, wil CEPANI – in samenwerking met alle betrokken partijen – op elk van die punten ieders noden opvangen.

II. La Box: un outil digital efficace qui a fait ses preuves

Afin de répondre aux exigences de notre temps, le CEPANI s'efforce depuis de nombreuses années à faciliter la gestion électronique et virtuelle des procédures d'arbitrage initiées sous l'égide de son Règlement d'arbitrage.

Ces efforts se sont plus récemment matérialisés, d'une part, par l'utilisation dès 2016 d'une plateforme d'échange de documents en ligne, dénommée « Box », et d'autre part par une référence presque systématique aux moyens de communication électroniques dans les articles pertinents du Règlement d'arbitrage 2020 (voir notamment, les articles 8 et 34).

La digitalisation des procédures d'arbitrage CEPANI est donc aujourd'hui opérationnelle et tombe à

point nommé pour répondre aux difficultés engendrées par la crise du COVID-19. Le CEPANI est donc préparé pour répondre à cette crise de sorte que celle-ci n'impacte que dans une moindre mesure les procédures pendantes ou les nouvelles procédures (lesquelles peuvent parfaitement être intentées en cette période).

Plus précisément, la Box est un outil mis à disposition du Tribunal arbitral, des parties et de leurs conseils. La Box a pour objectif de rassembler tous les documents de la procédure arbitrale – à savoir, notamment, la demande d'arbitrage, la réponse à la demande d'arbitrage, l'acte de mission, les ordonnances de procédure, les mémoires déposés, la Sentence Arbitrale (après qu'elle ait été notifiée) et la correspondance et les décisions du CEPANI et de son Secrétariat – sur une seule plateforme sécurisée (évitant ainsi également l'impression superflue de nombreux documents).

En pratique, dès l'introduction d'une procédure d'arbitrage CEPANI conformément à l'article 3 du Règlement d'arbitrage 2020, les conseils des parties et/ou les représentants des parties reçoivent un e-mail du Secrétariat du CEPANI les invitant à collaborer par l'intermédiaire de la Box, sur laquelle a été créé un « répertoire » (ou dossier) spécifique dans lequel elles vont pouvoir télécharger tous les documents pertinents dans leur dossier. Dès que le Tribunal arbitral est nommé, ses membres reçoivent un e-mail similaire leurs donnant également accès à ce « répertoire ». Le Secrétariat du CEPANI envoie à chaque intervenant des instructions détaillées relatives à l'utilisation de la Box – reprenant notamment des informations relatives à la création d'un compte d'utilisateur et à l'utilisation du « répertoire ». L'accès est réservé aux seules personnes qui y ont été autorisées par le CEPANI et moyennant l'utilisation d'un mot de passe. Dès lors, par l'intermédiaire de la Box, chaque partie et les membres du Tribunal arbitral peuvent partager des documents dans le répertoire lié à leur dossier et consulter les documents qui y ont été déposés par les autres (sans pouvoir les modifier ou les supprimer).

Cette Box est utilisée depuis quatre ans pour la quasi-totalité des procédures CEPANI et fait l'unanimité de ses utilisateurs.

Last but not least, l'utilisation de la Box n'implique aucun coût supplémentaire.

III. Casemanagement: een arsenaal aan mogelijkheden

In huidige omstandigheden zijn partijen soms geneigd om een uitstel of opschorting van de arbitrageprocedure te vragen. Nochtans blijven CEPANI, alsook de arbiters behoudens overmacht, vanop afstand beschikbaar. Meer nog: de pandemie doet geen afbreuk aan de fundamentele principes op basis waarvan het arbitrage instituut functioneert. Arbiters en partijen zijn gehouden snel en loyaal te handelen tijdens het verloop van de procedure en zich "in het bijzonder van elk vertragingsmanoeuvre of van iedere andere handeling die tot doel of tot gevolg heeft de procedure te vertragen" te onthouden (artikel 24(1) Arbitragereglement 2020). Arbiters moeten ook zo spoedig mogelijk het onderzoek van de zaak aanvatten (artikel 24(2)).

Arbitrage laat partijen inderdaad toe te kiezen tussen een arsenaal aan mogelijke maatregelen om hun geschil zo efficiënt en spoedig mogelijk op te lossen. Het werd reeds duidelijk dat, wat betreft de uitwisseling van correspondentie en stukken, elektronische communicatie de norm is bij CEPANI (zie hierboven). Overeenkomstig artikel 8 van het Arbitragereglement 2020 kunnen alle mededelingen geldig gebeuren "op elektronische wijze of door ieder ander schriftelijk communicatiemiddel".

Het Secretariaat van CEPANI geeft nu ook, sinds de invoering van de nieuwe maatregelen in België op 12 maart 2020, uitdrukkelijk de voorkeur aan uitsluitend elektronische en telefonische communicatie. Daarnaast is het belangrijk te benadrukken dat CEPANI bevestigt dat de opdrachtakte, die moet worden ondertekend door de partijen en de leden van het Scheidsgerecht (artikel 23(2) Arbitragereglement), ook op geldige wijze elektronisch mag ondertekend worden. Een kanttekening moet hier gemaakt worden bij de kennisgeving van de Arbitrale Uitspraak aan partijen (waarover hieronder meer).

Daar eindigt het verhaal uiteraard niet. Telecommunicatie is één aspect, maar arbiters en partijen kunnen andere maatregelen overwegen om het vlot – of met andere woorden: aangepast – verloop van de procedure te garanderen. Het Arbitragereglement 2020 moedigt overleg tussen partijen aan met betrekking tot de voorlopige procedure-agenda en de mogelijke "procedurele maatregelen die overeenkomstig artikel 24 van het Reglement vereist zijn en over alle andere maatregelen die de administratie van de procedure kunnen vergemakkelijken" (artikel 23(4)). Opnieuw kan dit overleg worden georganiseerd door ieder communicatiemiddel. In deze context kan het interessant zijn partijen te herinneren aan de mogelijkheid van de toepassing van de spoedprocedure (artikel 29) of een Arbitrale Schikkingsuitspraak (artikel 32).

Welke maatregelen uiteindelijk het best aangepast zijn aan de specifieke situatie van partijen zal natuurlijk sterk afhangen van de feiten. Dat arbitrage een antwoord kan bieden aan de verschillende bezorgdheden die in deze context zijn ontstaan sinds de pandemie staat echter buiten kijf.

IV. Impact limité de la crise actuelle sur la tenue des audiences

Les considérations de santé et de sécurité, ainsi que les restrictions de voyage, résultant de la crise actuelle peuvent affecter de manière significative la tenue des audiences.

Toutefois, dans le cadre d'une procédure d'arbitrage CEPANI, la tenue d'une audience physique n'est pas obligatoire. L'article 24.3 du Règlement d'arbitrage 2020 prévoit en effet expressément que le Tribunal arbitral peut décider de statuer sur pièces sans tenir d'audience, à moins que les parties, ou l'une d'entre elle, ne désirent être entendues, auquel cas l'audience peut se tenir par tout moyen de communication approprié.

Pour l'organisation d'audience virtuelle, le CEPANI n'impose pas le recours à un quelconque outil de communication. Les parties, en concertation avec le Tribunal arbitral, peuvent ainsi décider d'utiliser l'outil de leur choix. Le CEPANI les encourage évidemment à utiliser un outil sécurisé.

A cet égard, les recommandations de principe communiquées par la Chambre de commerce internationale (ICC / CCI) sont également pertinentes dans le cadre des procédures d'arbitrage CEPANI. Le CEPANI invite toutes les parties intéressées à en prendre connaissance.

Certaines parties ont déjà pris le pli de ces possibilités et ont organisé, avec succès, des audiences virtuelles.

V. De Arbitrale Uitspraak

Een Arbitrale Uitspraak moet ook in huidige omstandigheden binnen de door het Arbitragereglement bepaalde termijn verleend worden (artikel 34(1)). CEPANI bevestigt dat de handtekening van de Arbitrale Uitspraak elektronisch kan gebeuren (idealiter mits gebruik van een certificaat van authenticiteit of "e-handtekening"), al zullen partijen elk van hun kant willen nagaan of een e-handtekening ook volstaat in de jurisdicties waar zij eventueel zouden willen uitvoeren.

Wat betreft de kennisgeving (en dus het lopen van de daaraan verbonden termijnen) van de Arbitrale Uitspraak moeten partijen en arbiters echter wel aandachtig blijven. In normale omstandigheden maakt het Scheidsgerecht de originele exemplaren eerst over aan het Secretariaat van CEPANI, waarna het Secretariaat per aangetekend schrijven of per koerier tegen ontvangstbewijs een origineel van die ondertekende Arbitrale Uitspraak ter kennis brengt van elke partij (en hen daarnaast een kopie daarvan per e-mail bezorgt). Artikel 34(2) Arbitragereglement bepaalt dat de datum van de officiële verzending als datum van kennisgeving geldt.

Arbitrage blijft echter steeds pragmatisch. In het licht van de huidige omstandigheden kunnen partijen overeenkomen dat het origineel nu ook door het Scheidsgerecht zelf, rechtstreeks aan partijen wordt bezorgd per aangetekend schrijven of per koerier tegen ontvangstbewijs, waardoor relevante termijnen meteen kunnen beginnen lopen. Indien dit niet bewerkstelligd kan worden, zal het Secretariaat wel een elektronische versie aan partijen kunnen bezorgen (waardoor zij alvast kennis kunnen nemen van de inhoud van de Arbitrale

Uitspraak). De officiële kennisgeving zal in dat laatste geval echter slechts kunnen gebeuren eens de COVID-19 maatregelen opgeheven zijn.

VI. Conclusion

Le CEPANI, comme de nombreux autres centres d'arbitrage internationaux, se prépare à l'ère virtuelle depuis de nombreuses années par l'utilisation de Box, l'actualisation de son Règlement d'arbitrage et l'encouragement des communications par voie électronique. De la sorte, le CEPANI – et l'arbitrage en général – est en mesure de répondre aux difficultés engendrées par la présente crise COVID-19, notamment en offrant aux parties la possibilité de mener leur procédure à distance.

La suspension d'une procédure arbitrale ne devrait être envisagée que comme un dernier recours par les parties, lorsque des circonstances exceptionnelles le commandent.

L'arbitrage n'a jamais été un concurrent du pouvoir judiciaire. Ni en temps normal, ni en cette période. Mais force est de constater qu'à l'heure où les délais applicables dans les procédures judiciaires ont été prolongés et que certaines procédures judiciaires ont été suspendues en raison de la crise COVID-19, l'arbitrage offre une alternative très utile à certains acteurs de l'économie en quête d'une résolution rapide et efficace de leur différend.

BY CLAIRE LARUE
ASSOCIATE LOYENS & LOEFF

BY JASMINE RAYéE
ASSOCIATE LOYENS & LOEFF

DANKBETUIGING

Dirk De Meulemeester stond sinds 2014 aan het hoofd van CEPANI. Hij geeft de fakkel nu door aan Prof. Benoît Kohl en neemt zelf de rol van erevoorzitter op zich. Het ideale moment om terug te blikken op het zesjarige presidentschap van Dirk. Onder het voorzitterschap van Dirk heeft CEPANI op alle vlakken grote stappen voorwaarts gemaakt. Dirk is de bezieler geweest van een aantal grootschalige projecten, die hij met groot succes heeft uitgevoerd. Zoals hierboven reeds werd uiteengezet, riep hij de Arbitration Academy en de ADR Academy in het leven, leidde hij een werkgroep voor 'effective case management' die leidde tot de introductie van ('BOX'). Hij zette vervolgens de 'scrutiny'-procedure op poten, om de kwaliteit van CEPANI arbitrale uitspraken te harmoniseren en verder te verbeteren . Wij als leden van het Secretariaat hebben tevens de vruchten kunnen plukken van dit boeiend proces dat ook voor ons vele voordelen met zich meebrengt.

Orgelpunt van zijn presidentschap waren ongetwijfeld de festiviteiten voor het 50-jarig bestaan van CEPANI en de introductie van een nieuw CEPANI Arbitragereglement vanaf 1 januari 2020. Dirk s'est distingué par ses aptitudes à motiver et guider son équipe. Leader inspirant, ambitieux et naturel, il a créé une cohésion forte qui a permis de mener à bien les projets de taille susmentionnés. Pensons au franc succès de la célébration des 50 ans du CEPANI. Cet événement a marqué les esprits de la communauté de l'arbitrage, tant par la qualité des interventions que par les échanges qu'il a pu susciter et le nombre de praticiens qu'il a pu rassembler.

Dirk fut également un ambassadeur et un orateur hors pair. Grâce à son charisme, sa perspicacité et son assertivité, il a toujours trouvé le ton juste en toute circonstance pour représenter le CEPANI, en Belgique ainsi qu'à l'étranger. Nous ne le remercierons jamais assez pour sa présidence emblématique et son implication à toute épreuve.

BY EMMA VAN CAMPENHOUDT
SECRETARY GENERAL CEPANI

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Annet van Hooft et Jean-François Tossens cessent leurs fonctions de Rédacteurs en chef de la revue b-Arbitra et passent le flambeau à Caroline Verbruggen et Maarten Draye.

Nous tenons à leur adresser nos plus sincères remerciements pour le travail accompli durant ces nombreuses années et pour la précieuse contribution qu'ils ont apportée à b-Arbitra.

Leur implication a permis le développement de la revue, sa visibilité accrue et son rayonnement international. Ils ont toujours veillé à sélectionner des articles très actuels, de haute qualité et novateurs en matière d'arbitrage commercial, d'investissement et de commerce international. Les publications de la revue ont ainsi participé à la recherche scientifique dans ces différents domaines.

Nous nous réjouissons de pouvoir encore les compter parmi les membres du comité de rédaction.

PARTNERSHIPS

Le CEPANI faisant office de voie d'accès à la communauté belge de l'arbitrage, de nombreuses entreprises ont manifesté leur intérêt à collaborer avec lui.

Le CEPANI a décidé d'accéder à ces demandes, tout en appliquant des normes strictes.

En tant que centre d'arbitrage, le CEPANI estime que l'indépendance, l'impartialité et l'intégrité constituent des exigences primordiales et cruciales pour assurer son bon fonctionnement et inspirer la confiance auprès de ses utilisateurs.

Par conséquent, les partenaires du CEPANI doivent être des entreprises qui appliquent elles-mêmes des normes strictes, jouissent d'une réputation sans faille et figurent au premier plan dans leur domaine.

Partners van CEPANI mogen op geen enkele manier betrokken partij zijn bij arbitrageprocedures die CEPANI leidt.

Aangeslotenen of personeelsleden van CEPANI-partners mogen geen functies uitoefenen in de bestuursorganen van CEPANI en mogen evenmin worden aangesteld of bekrachtigd als arbiter, mediator, scheidsrechter of expert.

Partnerships worden aangegaan met het oog op een langdurige relatie en kunnen alleen op een niet-opzichtige en esthetisch verantwoorde manier in beeld komen op de CEPANI-website, in de CEPANI-newsletter en tijdens conferenties waarvan CEPANI of CEPANI40 de hoofdorganisator is.

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Op 15 november 2016 is CEPANI een partnership aangegaan met Wolters Kluwer Belgium voor een aanvangsperiode van vijf jaar. Wolters Kluwer Belgium biedt informatie, software en diensten aan juridische, tax, accounting, finance en HSE professionals en bedrijven. Ze helpen hun klanten efficiënter en effectiever te werken en vol vertrouwen beslissingen te nemen.

Wolters Kluwer staat ook in voor de wetenschappelijke verzameling van CEPANI alsook b-Arbitra.

CEPANI en bMediation hebben een samenwerkingsovereenkomst gesloten.

Pierre Schaubroeck, Ere-Voorzitter bMediation: *"CEPANI en bMediation zijn belangrijke actoren op het gebied van de buitengerechtelijke geschillenbeslechting. CEPANI legt zich in hoofdzaak toe op arbitrage, terwijl bMediation zich op bemiddeling concentreert. Een samenwerking tussen beide organisaties ligt dan ook voor de hand."*

Dirk De Meulemeester, Voorzitter CEPANI: *"De samenwerking is het samenbrengen van expertise en is een belangrijke stap om de versplintering in het landschap van buitengerechtelijke geschillenbeslechting te remediëren."*

Door samen te werken willen beide organisaties actief bijdragen tot een doorbraak van duurzame effectieve methodes van geschillenbeslechting in burgerlijke en commerciële zaken.

Zowel bMediation als CEPANI onderschrijven daarmee het plan van de Minister van Justitie om onder meer bemiddeling een volwaardige plaats te doen verwerven in het Belgische justitielandschap.

Hun samenwerking zal zich o.a. uiten in informatie en overleg aangaande wetgevende initiatieven en inzake lezingen, colloquia, studiedagen en opleidingen. Zo werd de jaarlijkse Business Mediation Summit op 26 januari 2017 voor het eerst gezamenlijk georganiseerd door bMediation, het Instituut voor Bedrijfsjuristen en CEPANI .

Beide organisaties behouden hun eigen structuren en hun bestaande samenwerkingsverbanden, maar zullen zich thans samen inzetten voor de realisatie van een waarachtige cultuur van duurzame geschillenbeslechting in België. Ze staan evenzeer open voor samenwerking met andere organisaties die deze doelstelling van algemeen belang nastreven

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